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THE EARLY
CONSTITUTIONS OF CHILE
1810 1833

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P. V. S.

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CHAPTER I.

INTRODUCTION: CHARACTER OF THE EARLY CONSTITUTIONS OF LATIN AMERICA

All of the Latin-American countries, from the beginning of their independent lives, have had constitutions that in theory or in reality provided for an organization of their forms of government. Often the instruments of the early period gave a semblance of legality and normality to régimes already established. Even the dictatorships so common in the last century were limited presumably by the terms of the fundamental laws that served as so many platforms which the dictators issued to justify their governments. The constant putting forth of such documents, no matter what their origin or character, developed nevertheless a habit of constitutionalism. Though strikingly different from that in older nations and at variance with the North American or English form and ideal of constitutionalism, it has met real needs, and its persistence to the present time justifies a study of the early constitutions of the Latin-American states.

There is no work devoted to a study of all the Latin-American constitutions promulgated in the period 1810-1835. The latter date is arbitrarily chosen, while the first is the one which marks the beginning of the main revolutionary movements and in many cases the assembling of the first constitutional conventions. There are general works on the constitutions in operation at later times; and innumerable writers have devoted their pens to discussions

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of individual constitutions or to national constitutional histories;¹ but none has appeared in English, and this is another justification for the present study.

Still another lies in the illumination such a study gives to the workings of the creole mind and to the political ideology of the period. Few volumes dealing with the political ideas of Simón Bolívar vouchsafe much consideration to the constitution he wrote for Bolivia in 1826. The early instruments not only mirror the political ideas and ideals of their framers but also reveal their class interests and cast side-lights on the general level of the culture of their day. These documents are therefore historically important. In fact, their importance is much more historical than constitutional and their contributions to political science are practically negligible. The present work, therefore, has been restricted to a brief study of the creole aristocracy as an economic and social class and to the documents as expressions of their group interests and ideals.

Written by persons untutored in political science and without experience in self-government for peoples largely illiterate and backward in economic and political development, many of the early constitutions would of necessity be immature attempts at organization of government. If there is one point all writers, Latin-American and foreign, agree on, it is that the inhabitants of Latin America in 1810 were absolutely unprepared for self-government. Not even the educated creoles were prepared to step into the shoes of the mother country. They differed from the great masses only in that they had a theoretic knowledge, imperfect and prejudiced, of political science. They knew too, which the masses did not, from their reading of European writers on American conditions what was wrong with the Spanish colonial system.

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The author was tempted to marshal the testimony of Latin-American writers regarding the unpreparedness of the Latin Americans to govern themselves, but it soon became evident that all of them considered this as axiomatic. Any one acquainted with the rudiments of Spanish-American colonial history knows that, in the absence of such advantages at home it was not, and could not be, the policy of Spain to give the colonists either a well-rounded education or any opportunity of self-government. Like the medieval church, the Spanish government felt quite qualified to guide its subjects into salvation, intellectual, political and celestial;² and the less initiative and the greater docility shown by its subjects the easier its task.

This policy was aided and abetted by the use made by the Spanish monarchy of the church in civilizing and governing the New World. It was the church largely untouched by the Protestant revolt which came to America. Its activities there had started before Luther's revolt had begun, and after the Council of Trent it was the more dogmatic and narrowed church which operated in the New World. Without competition from dissenting sects it was able for centuries to reproduce the institutions it had created and used in the middle ages. Obviously, then, any liberal or revolutionary ideas were forbidden and kept out of the educational curricula.

These statements about the ignorance and unpreparedness of the Latin Americans for self-government should not, however, lead to false conclusions. In spite of all the obstacles the creoles who directed the emancipatory and governmental movements had to hurdle, they did far better than might have been expected. Even in countries where the movement did not end, as in Chile, with a fairly permanent fundamental law, their entire constitutional history does not compare unfavorably with that

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of other countries whose background had better prepared them for self-government and constitutionalism.

If in France,³ where the political philosophy of the eighteenth century spread relatively easily, people were not ready for self-government, how much worse would the situation be where this philosophy was forbidden. French philosophy, nevertheless, was smuggled into Latin America, and the admiration for France and French ideas was unbounded among the creole classes. When also the Thirteen Colonies of Great Britain revolted from their mother country and adopted a republican form of government, certain individuals and groups in Latin America, began to dream of doing the same thing. Then when France broke with the "old régime", and Spain itself adopted a constitution in 1812, Latin Americans thought of two solutions for their problems: national independence and representative government based upon a written constitution.

There has been much criticism of the framers of the early constitutions of Latin America and of the leaders who desired republican forms of government, not only because of the unpreparedness of the peoples concerned, but specifically on the ground that the basic laws of France and the United States should not have been imitated or adapted for their use. José de San Martín and other Spanish-American patriots considered republican institutions premature. None of them, however, was willing to countenance rule by divine right, or by an absolute monarch. It is clear, therefore, that some form of constitutional government had to be provided. Latin America had known reaction, conservatism, privilege and absolutism in abundant measure, and if a break with the past were to occur one would expect all steps to be taken which would definitely make impossible a return to the conditions of the old régime.

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It was expecting too much that these inexperienced Latin-American political scientists should be prophetic and prescient. Few countries, if any, in the world have made a definite political adjustment or organized a definite form of government at the very outset of their independent political life.⁴ Even in the United States a great civil war was necessary before a national interpretation of the Federal Constitution became accepted. Many amendments before and after that struggle and appeals to the Supreme Court have been resorted to in order to uphold this fundamental law. France, too, was not able to achieve a permanent settlement of the question of governmental organization until it had passed from limited monarchy to republic, to empire, and finally back to a republic again. Yet in spite of revolutions, dictatorships, discontent and hardships, the constitutional system has taken root in the countries of Latin America, and there is being developed a true constitutional sense or feeling among the masses.

The criticism that the adaptation of French and United States models was unintelligent and that none of the early Latin-American instruments of government showed marked originality is unfounded on two scores. The latter will be discussed first. Two of the early constitutions departed from the models mentioned above: the Bolivian of 1826 and the Chilean of 1823. Simón Bolívar, who wrote the first, had a very definite constitutional philosophy. He realized that French and North American institutions were not suited to Latin-American conditions. In his instrument of government he attempted to develop a form adaptable to the social, economic, ethnic and political conditions of Bolivia at the time. In spite of his sagacity and of his knowledge of his people, Bolívar's constitution was superseded in 1831 by another approximating the more conventional models. In

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1823 there appeared the most curious constitution written in America. In many ways Juan Egaña, its author, attempted to organize Chileans into a political system conformable with Chilean conditions. Like all the others, it was also a very short-lived fundamental law. This suggests, it would seem, that there were serious obstacles to be overcome in developing political institutions consistent with Latin-American conditions.

But the criticism is unfounded in another respect. The adaptations of the French, Spanish and North American models were made much more intelligently than many writers will admit. And one of the reasons for the long tenure of life of the Chilean constitution of 1833 is explainable by the adaptations it made. It centered the control of government in the educated and well-to-do classes. That the literacy or property requirements limited suffrage is unimportant because education and wealth in those days were almost synonymous. A modern democrat who impugns this tendency of Latin Americans to limit the exercise of the suffrage to a small class must not forget that in many of the early State constitutions of the United States, for example, suffrage was restricted by imposing property and other qualifications and that even at the present time one section of the population enfranchised by constitutional amendment is largely kept from the polls by very ingenious devices.

As has been implied, the early Latin-American constitutions were not constitutions in the usually accepted use of the term. They were not considered by the people as fundamental laws determining the sovereign power and defining the functions and regulating the relations of the legislative, judicial and executive branches of government. With no experience in constitutional practice and with a peculiar attitude developed in colonial times toward all laws it is not to be wondered at that

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they changed their constitutions much as they did their clothing. Among the more sophisticated, laws were always considered as things to be obeyed if it were convenient and disregarded if not. "I obey but I do not fulfill" was a colonial maxim, and the habit and psychology were passed on to independent days. The manner in which such constitutions were composed and the personalities of their framers were generally too well known for a high order of inspiration to be attached to their conception. It was difficult to treat with marked respect documents written by friends or relatives, and rarely does one find in Latin America a feeling such as has become associated with the Federal Constitution of the United States.

Classifying and sketching briefly the character of these constitutions, it may be said that in point of time there were two classes, those written before independence and those after. The first were generally short, inchoate documents, composed hastily under pressure and with very specific purposes, or long preceptive documents emphasizing the rights of man with little regard for matters of government.⁵ In some cases one suspects that they were put forth to display the erudition of their drafters. Those written after independence were generally more serious in tone, language and purpose. The pre-independence basic laws were more ingenuous, less histrionic and less artificial, and revealed more clearly the real intellectual and cultural status of their day.⁶ The post-independence documents framed more leisurely, under better conditions, and by members of the creole aristocracy playing for a commanding position in the newly created states were more artificial and sophisticated, reflecting as much as anything else the opinions, ideals and personalities of their editors or authors. If the writer were a sincere idealist the constitution would em-

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body his views, if he were a *littérateur* it would be a literary product, if a dictator it would be illusory, if a practical man it would be sensible and to the point. This is curious language to use in describing fundamental laws of states and their conception but, as the author believes, appropriate in evaluating them.

The early constitutions of Latin America may be divided into several classes as to their origin and purpose. Some were frankly pure imitations. The federal constitution of Venezuela of 1811 is an example of an unintelligent but highly flattering adaptation of its prototype in the United States. The Mexican and Central-American constitutions of 1824-1826 were also shadows of the latter. Others were almost direct copies of French or Spanish models. A few others, however, were substantially original. Apart from those framed by Bolívar and Egaña, the one composed in 1808 for Latin America, or Colombia as he called it, by Francisco de Miranda, would have taken the palm in this respect.

Certain constitutions represented sincere and honest beliefs in the efficacy of a particular form of government to provide peace, prosperity and political stability. Undoubtedly the constitutions of Bolívar and Egaña belong in this class. Generally they were the work of some determined individual. Antonio Nariño of New Granada, for example, believed firmly that a "unitary" or centralized form of government was the only one suitable to his own country and to Latin America. While all about him clamored for a federation he made his little republic of Cundinamarca retain its "unitary" constitution until Bolívar forced it by arms into a federal system. José Bonifacio⁷ had a very definite notion of an ideal Brazilian constitution under a limited monarchy. José Miguel Infante in Chile was wedded to the federal form⁸.

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In some cases the instruments were framed for external consumption or diplomatic purposes. To secure recognition of their states or to obtain a prince or to give a visible sign of stability and organization nothing seemed more appropriate than such a fundamental law. According to an Argentine commentator, the constitution of 1819 of that country was written solely for foreign consumption and not to organize a government at all. It was to be carried to the United States and Europe as proof of Argentina's maturity and as a bait to attract a prince.⁹

In other cases the constitutions were supposed to cover with a cloak of legality a régime existing *de facto* or to veil a dictatorship. The two provided by Bernardo O'Higgins for Chile are excellent examples of this type. He believed firmly that a dictatorship was the *sine qua non* of political stability. Other rulers vested with a like degree of power were interested primarily in perpetuating their own personal governments without much consideration for theories of state. They had to satisfy, however, even if atrabiliously, the devotion of many of their citizens to paper laws and rights. On the other hand, after a *caudillo* or partisan leader had vaulted into the political saddle he often rewrote a constitution to make it conform to his own ideas or mode of administration. Once his hands had touched the document no subsequent act of his would be unconstitutional, so cleverly was it redrafted. He and his kind made the law, construed it and applied it.

The function of other constitutions was to satisfy a love for beautiful-sounding words and phrases.¹⁰ To the pent-up, emotional Latin American of 1810 such a vehicle of expression was what a drama of Molière's meant to a Frenchman of his day. He could become drunk in a perfect orgy over individual rights and privi-

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leges, separation of powers, popular sovereignty, and other political catch-words like liberty, equality and fraternity. The indifference shown in many constituent assemblies to immediately pressing problems while they debated the pros and cons of including some specific right or altering the language of another is a case in point. Perusal of some of the constitutional literary products of the educated class awakens a suspicion that not even the authors themselves understood their own compositions. In this respect the best study of the often mentioned political ideology of the Latin Americans is furnished by the earliest of their basic laws.

Constitutions reasonably well adapted to their ethnic, economic, political, traditional and religious environment were few, but these alone withstood the hammerings of opposition, the ebb and flow of social forces, the subterranean undermining of internal and external foes. No constitution could succeed which was imposed from above. Some Latin-American framers realized the fact that instruments of the sort must be grown, must come from the soil and be nourished by natural processes derived from actual conditions. It is true that the number of such thinkers was very small but the few were rewarded in that their constitutions lived on.

In all the Latin-American countries between 1810 and 1835 two constitutional and governmental currents are discernible. In one place they ran parallel to each other and finally merged into one, as in Chile; at another they ran in opposite directions and one dried up, as in Argentina; but generally they joined at a later period. The one was the theoretic and artificial constitution of the nation; the other was the actual organization formed practically and without attention to political philosophising. The first obeyed abstract principles, the second the concrete needs of the moment.

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What happened was inevitable. The chaos and anarchy resulting from the removal of Spanish rule and the dialectical constitutional discussions of those who should have had their hands to the plough gave an opportunity to local forces to set up their own government. Thus when the Spaniard was defeated and the constitution makers came to their senses they found governments *de facto*. Argentina furnishes an excellent illustration of this double movement. Certain national leaders wrote and rewrote "unitary" constitutions in 1817, 1819, and 1826, sincerely believing the "unitary" form the ideal. They did not or would not see that the provinces were framing their own constitutions or governing themselves and had thereby created a federation *de facto*. One current flowing in one direction, the other in another, gave Juan Manuel de Rosas an opening to bring into existence by revolution a type of government somewhat similar to the one Chile established constitutionally in 1833.

Whether by a written law or without, by a dictatorship or a monarchy, in the last analysis all the Latin-American countries for the first years of their independent lives adopted one common formula of government: a strong, quasi-omnipotent executive, a subservient legislature, a controlled judiciary, exclusively controlled or farcical elections, a centralized local administration, and a very limited electorate.¹¹ Even when the constitutions of other nations were used as models they were modified so as to provide a type of government such as has just been outlined.

A matter of interest is the influence of North American, French, English and Spanish models on the framers of the Latin-American constitutions. In the late eighteenth century a vast amount of material was published in France on the American Revolution, including the

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State constitutions as well as the Articles of Confederation and the Federal Constitution. Important Latin American personages in the epochal years 1810-1835 had travelled either to the United States or to Europe and there could acquaint themselves with the constitutions then in existence.¹² Furthermore, the first step taken by many of the nascent states was to proclaim freedom of commerce and of the press, which permitted the entrance and circulation of goods and literature heretofore kept out. Many of the decrees were made in 1810. Even as early as 1806 the English invasions in Buenos Aires had served to introduce directly many revolutionary ideas.

Another factor of foreign influence was the masonic *Logia Lautaro* founded in London by Miranda, Andrés Bello and others.¹³ This lodge with its many branches in Europe and America counted in its membership practically all of the outstanding figures of the period of emancipation in Latin America. From Mexico to Chile and Argentina names of influential leaders can be found who were loyal to it. These men, thinking about independence and republicanism long before the revolutionary movements broke out, interested themselves in constitutional affairs and acquired all the knowledge they could.

Probably as influential as the North American or French constitutional documents themselves in developing a desire for independence and a political philosophy were the commentaries of English, French, Spanish, German and other writers who had visited the New World and described conditions there in non-flattering terms. This is especially true with regard to conditions in Spanish America and the Spanish colonial system.¹⁴ References to these writers are frequent in documents of the period 1810-1835 and will be mentioned as the individuals who quote them are discussed.

Though much of the inspiration of the Latin-American

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liberators and statesmen came from Europe it must not be forgotten that the very philosophy of revolution from which they drank so deeply was partially derived from speculation upon discoveries made in the New World. Primitive man roaming the forests of South America made easier the philosophic reconstruction of human society and the idea of a social pact. The utopias of sixteenth and seventeenth century Europe owe their existence in no small measure to the study of early American social phenomena. But probably more potent than anything else was the discovery of absolute rulers among the aborigines who had never heard of the European God and whose reign was not justified by a theory of divine right. Thus chieftains of the Inca and Aztec realms unwittingly contributed to a philosophy which was later to free their descendants—now mixed with Spanish blood—from those who had despoiled them of their kingdoms.¹⁵

Whether the main models used were North American, French or Spanish, however, is relatively unimportant. More significant is it to note how the models were adapted to local needs. The process can only be understood after a survey of the elements concerned and after a brief glimpse into the minds and motives of those who provided them.

In an analysis of Latin-American constitutions personalities, therefore, will be found to count for more than assemblies. In fact, many such bodies delegated the drafting of a given instrument to a committee which in turn entrusted it to an individual. Comparatively few persons were sufficiently qualified for the purpose; hence the majority were content to allow those with a modicum of knowledge and intelligence to dominate. In other cases the march of events obeyed a foreordained plan. If the scheme succeeded some one person would find him-

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self charged with the task of writing a new constitution. Of course it would be one whose ideas coincided with those of the leader or leaders who had arranged the *coup d'état* or given the *coup de grace*. In still other cases the foundation work would be so thoroughly laid by some enterprising or far-sighted statesmen that a constituent assembly would be elected which was dominated by a common constitutional philosophy or which was so passive as to agree to any constitution presented by men of authority.¹⁶ In one specific case a project written in Chile *pour amour de l'art* served as one of the principal sources for its subsequent constitutions.¹⁷ In passing it may be said that as a rule the personalities in question are readily understandable, since many have left elaborations of their political philosophy and explanations of the failure of their ideas in practice.

From the references to personalities and to the purposes of the documents it must be evident that a minute analysis of the early Latin-American constitutions would be futile and only betray a lack of understanding and appreciation of their true character. The sum total effect is the vital matter.¹⁸ If in its entirety a constitution gave the executive autocratic power it is more important to know this fact than to know that the local governments were given the right to oversee certain matters or that the executive needed the sanction of the legislative for other acts. Only a few of the early instruments were written with an eye to perfection in matters of details,¹⁹ and many are very obscure or verbose in language. The life of these documents, however, was often so short that imperfections did not matter much.

Had each constitution been put into effect even for a brief period either in its entirety, or even in part in some cases, the upheavals would have been devastating, and after six or seven essays of the sort the ignorant masses

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must have risen in revolt. Practically every code abolished slavery anew even though it had been prohibited by a previous one. *Mayorazgos* and *vinculaciones*, or entailed estates and entail in general, were done away with in one such instrument and yet five years later another allowed them to continue.²⁰ The ineffectiveness of these documents to alter conditions brings up another point.

The hue and cry raised by some Latin-American writers about the evils brought about by the adoption of a federal or of a "unitary" constitution is misleading and false. Neither one system nor the other as such produced either evil or good. It was the unreasoning tenacity of the supporters of one more or less theoretical régime or another which kept them from cooperating in the war against Spain and which led them into civil strife besides.²¹

A proof of this is found in New Granada. Under the influence and direction of Antonio Nariño there was established the Republic of Cundinamarca, a little "unitary" oasis in the midst of what was presumed to be a federation. Yet in this small, compact centralized state Nariño had every kind of difficulty which any federal executive in Latin America ever had to contend with. There occurred civil wars, quarrels, defections of the army, suspensions of the constitution, and other dissensions as severe as many occurring in larger states organized either under a "unitary" or a federal régime. Nariño, clinging loyally to his ideal form of government, was probably more detrimental to Granadine stability and unity than any constitution of the time as such. The cause of the evils there and elsewhere was not the constitutions so much as a host of other factors. The early instruments were too short-lived and too easily changed to have had an opportunity of doing much harm. And

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if these basic laws really organized governments, how could Argentina become a federation *de facto* under the aegis of three "unitary" documents?

It is only when a constitution seeks to regularize and normalize the relations between existing elements in a manner befitting their character and conditions that it gives rise to a genuine constitutional régime. And then it does what any valid constitution does—it sets down in a written code the prevailing laws and customs of a land. To the extent that this situation appeared in the Spanish-American republics it meant a reversion to a form of government very similar to the one used by Spain in her colonies.

Substantially this is just what happened. The experience of the United States was repeated in most of the Latin-American countries. The Articles of Confederation were the very antithesis of the British colonial policy. Their failure to provide for a stable and economically sound government led to the framing of a new instrument which was almost a reproduction of "the British system of politics, economics and judicial control, but grounded on American authority created by an American constitution."²²

FOOTNOTES

CHAPTER I.

1 Some of the general works on Latin-American constitutions are: Rafael Altamira, *Constituciones Vigentes de los Estados Americanos*, 3 volumes, Madrid, 1926; Justo Arosemena, *Estudios Constitucionales sobre los Gobiernos de la América Latina*, 2 volumes, Paris, 1878. Though Arosemena treats mainly the constitutions in operation in the third quarter of the nineteenth century, he has historical allusions to the earliest constitutions of each country he is discussing. His work is the only one which has made any attempt to cover the whole subject. His data were incomplete and there are many gaps and some serious errors. His commentaries, however, are suggestive and he deserves credit for pioneer work. Manuel Colmeiro, *Derecho Constitucional de las Repúblicas Americanas*, Madrid, 1858; R. Blanco Fombona, *La Evolución Política y Social de Hispano América*, Madrid, 1911; Rafael María de Labra, *América y la Constitución Española, Estudio Histórico-Jurídico*, Madrid, 1914; Adolfo Posada, *Instituciones Políticas de los Pueblos Hispanos-Americanos*, Madrid, 1900. This work deals only with Mexico, Central America and Colombia. José Ignacio Rodríguez, *American Constitutions*, 2 volumes, Washington, 1907. Rodríguez published in parallel columns the constitutions obtaining in 1906 in the original and in English translations. He has short historical backgrounds which are, however, unreliable. Madrid y Santiago, *Derecho Constitucional de las Repúblicas Hispano-Americanas*, Valparaíso and Lima, 1858; Raúl Carracá y Trujillo, *La Evolución Política de Ibero-América*, Madrid, 1925. The works on individual countries are listed at the end of the present volume.

2 M. L. Amunátegui, *Los Precursores de la Independencia de Chile*, Vol. II, p. 329.

3 The substance of the following six paragraphs is reprinted by permission of the editor of *Chile* from the auth-

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or's article, "The Constitutional Development of Chile", Vol. VI, No. 35, March, 1929, pp. 105-106.

4 José Guillermo Guerra, *Temas Constitucionales (cálamo corriente)*, p. 22. Guerra compares the Latin-Americans at the outset of their independent life to new-born kittens, blind at birth.

5 José Joaquín Guerra y Manuel Antonio Pombo, *Constituciones de Colombia*, Vol. II, p. 715. These authors compare the 1821 constitution of Colombia with those of 1811, 1812 and 1815, and say that the latter contained puerile minutiae and that the framers while concentrating on details overlooked political problems of great moment.

6 Notably the constitutions of Tunja, Mariquita, Neiva and others of New Granada issued in 1811, 1812 and 1815. Those of Trujillo, Mérida and Caracas, with their references to peculiarly local needs, also belong to this class. One of them includes the request for a surgeon from the national government.

7 See author's monograph, "José Bonifacio and Brazilian History", *Hispanic American Historical Review*, Vol. VIII, No. 4, November, 1928, pp. 527-550.

8 *Infra*, p. 119.

9 Luís V. Varela, *Historia Constitucional de la República Argentina*, Vol. III, pp. 248 *et seq.* Cf. V. González Calderón, *Derecho Constitucional Argentino*, p. 72. This author is not so dogmatic as Varela but in substance agrees with him regarding the constitution of 1819.

10 This passion is referred to by many Latin-American writers themselves. José María Samper, Guerra y Pombo, Luís Galdames and Varela speak of the blind devotion to North American and French models. Galdames speaks specifically of the love of high-sounding phrases.

11 The formula of government described in this paragraph was derived from a study of tables and charts prepared by the author while making an article by article analysis of the thirty-four constitutions issued by the Latin-American nations after their independence had been achieved. The

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tables on the executive show most graphically how his powers were greatly increased in all cases after 1826. The charts showing the relations of the three branches of government, the local jurisdictions and the electorate corroborate the results obtained from a study of the tables. Alfredo Pérez Guerrero, in "Las Constituciones del Ecuador", *Revista de la Sociedad "Estudios Jurídicos"* (June-December, 1926), pp. 433-440, has arrived at essentially the same conclusions and further agrees with some of the statements made by the author in the opening paragraph of this chapter.

12 Domingo Amunátegui Solar, "Jénesis de la Independencia", *Anales de la Universidad de Chile*, pp. 11-14; Luis Galdames, *La Evolución Constitucional de Chile*, p. 25.

13. See *Documentos para la Historia de la Vida Pública del Libertador de Colombia, Perú y Bolivia*, compiled by José Félix Blanco, Vol. III, pp. 602 ff., for the constitution and other matter concerning the *Logia Lautaro*. This institution was introduced into Argentina and Chile by San Martín, Carlos María de Alvear and O'Higgins.

14 M. L. Amunátegui, *La Crónica de 1810*, Vol. II, pp. 51-53, describes the relations and correspondence of José Antonio Rojas, a very distinguished creole, with the well known Scotch historian, William Robertson. This is only one case of personal contact of a creole with one of these writers. But in this case the relations of Rojas to Manuel de Salas, Rozas, Infante and Egaña is significant. His books, a remarkably liberal library picked up in Europe, passed into the hands of many of these persons just enumerated who later became leaders of the revolution.

15 Cf. William R. Shepherd, "The Expansion of Europe", *Political Science Quarterly*, Vol. XXXIV, Nos. 1, 2 and 3, March, June and September, 1919.

16 In Chile Diego Portales prepared the ground for the constitution of 1833. *Infra*, p. 130.

17 Juan Egaña's draft of 1811, which was published in 1813.

18 An illustration is the constitution of 1822 of Chile. As will be seen (*infra*, p. 93), the arrangement for the Court of

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Representatives was the all-important constitutional provision which gave the executive supreme power. This fact would never be brought to light by a detailed study of his powers as outlined in the sections on the executive alone.

19 The provincial constitution of Entre Rios in Argentina is an exception. It is a model of redaction, clarity and conciseness and deserves the praise lavished on it by Juan P. Ramos and González Calderón in their works.

20 The constitutions referred to are the Chilean of 1828 and 1833.

21 In regard to the question of the suitability of a federal or a centralized system for the Latin-American countries, the author disagrees radically with the opinions of the majority of Latin-American constitutionalists. Most of them begin with a personal predilection for either the North American or French system and become ardently and irrevocably convinced of the supremacy of one system over the other. They then bend every effort to prove that local conditions were admirably suited for that form of government and no other. Many of the constitutional historians also have sat in constituent assemblies where of necessity they had to support one form of government and oppose another, and some of their works have been written to substantiate opinions enunciated in these assemblies. The author's own opinion is, that where historical, traditional, social and economic conditions warranted a federal form of government, a federal form would come into existence regardless of the accumulated proofs of theorists that a "unitary" form was best, and regardless of the unanimous votes of constituent assemblies in favor of a centralized constitution. Mexico created a federal form of government even though there were no provinces with constitutions, as in Argentina, and this was justified by the social, economic, traditional and historical factors of Mexico's previous history. On this point see Ernest Gruening, *Mexico and Its Heritage*. The case of Argentina has been discussed in the text. Neither system precluded the creation of a strong executive, and this seems to the author far more important than the question of provincial autonomies. He bases his opinion on the fact that strong executives whether as presidents, dictators,

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caudillos or what not, came into existence as soon as Spain had been definitely defeated. They were the products of historical, social and economic forces which they represented, obeyed or capitalized. If the action and interaction of these forces demanded a strong-handed individual at the controls no paper constitution or any other obstacle could stop their compelling and unceasing activity from putting one there. Whatever the explanation of their appearance, they came and dominated the Latin-American political stage as in many countries they still do.

22 C. A. and Mary Beard, *The Rise of American Civilization*, p. 328.

CHAPTER II.

COLONIAL IDEAS AND INSTITUTIONS AFFECTING THE POLITICAL PHILOSOPHY OF THE CREOLES

Whereas the inhabitants of the Thirteen Colonies of Great Britain had many sources of knowledge and practice for developing republican institutions, the Latin Americans had but few, and those of relatively little worth. The former had church organizations and town and provincial assemblies as schools of political arts and sciences. They had a mother country with a parliament and traditions of self-government. Many of them had come to the New World in revolt against certain institutions and practices of the Old World. Liberty of conscience and commerce was nurtured among them. The very use of the word liberty was significant. Companies and provinces were given charters or wrote their own covenants. The American colonists had easy access to the literature of political philosophy and came to know their Locke, Montesquieu and Rousseau. When their energies were given rein nothing could restrain them from devising and adopting plans of government. Almost overnight they leaped into constitutional adolescence.

The Latin Americans, on the other hand, had neither autonomous churches nor provincial assemblies. Their municipal governments resolved themselves into small aristocratic corporations with purchasable and hereditary offices. Spain had long since dispensed with

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its erstwhile parliament, the *Cortes*, and had emasculated the *fueros* or contracts of the towns which retained only a shadow of their early glorious autonomy. None of its subjects came to the New World as known dissenters. As a rule, also, no foreigners legally could find refuge in its colonies. Charters granting a semblance of self-government were few, and most of these were soon revoked. The Latin Americans had virtually no freedom of choice in literature, religion, or in many other mental stimulants enjoyed by the North American colonists. Their pent-up energies when loosed in the nineteenth century erupted in disorder and flowed into well-intentioned but impractical schemes of government.

Under these conditions the Latin Americans had to learn by observation, by travel and by reading clandestinely in prohibited books. They gained much information, and even this indirectly, of how not to govern. As passive onlookers and subjects they developed the illusory knowledge of spectators. Identification of oneself with an actor on the stage and the actual performance of the rôle were two different things, as the Latin Americans found out to their sorrow later on. They came to know quite definitely what they did not want but they did not know just how to obtain what they did want. Whatever the amount of their acquaintance with the eighteenth century philosophy of revolution and the North American and European constitutions, the information thus gained was necessarily theoretical.

The writers of Spanish-American constitutions had to draw on three main sources for their political knowledge. One was the colonial machinery that had made them martyrs in their own eyes, as it was based on a politico-economic theory which, in their opinion, had rendered them subject to exploitation. There is irony in the facts, however, that hated as it was it had been efficient as a

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system of administration, that the colonists had become accustomed to the type of government it created; and that the creole aristocracy once in control reproduced many of its parts so that they might reap the benefits which the mother country had formerly garnered from it. The other sources were the European philosophic literature and the constitutional models already referred to.

In order, therefore, to understand many articles, allusions and provisions of the early Chilean constitutions, it is necessary, first to survey briefly those parts of the viceregal machinery which were recreated in Chile's basic laws, and secondly to call attention to colonial practices which the Chileans sought to remedy. In regard to the defects, evils and injustices of the colonial government, be it said, the question of their actual existence is immaterial. As long as the Chileans believed that they existed, for historical purposes they did exist. And for the purpose of discovering the attitude of Chileans toward the colonial government the passionate and eloquent proclamations of their contemporary writers will serve admirably, if tempered somewhat with the investigations of their more objective historians.

Don Quixote and Sancho Panza are incomprehensible and ridiculous figures except in their proper setting and atmosphere. Just as quixotic would some of the early Latin-American constitutions appear to readers not accustomed to nor acquainted with Latin-American psychology and history. The tendency is to compare such constitutions with those of North America and Europe which had just preceded them; a better comparison would be with those of Rhode Island and Connecticut drafted in the seventeenth century, though even at that time the English colonists were certainly more experienced in the art of self-government than the Latin-Americans in 1810.

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After a glance at the administrative machinery a backward look into the rise of certain institutions such as the church and the army follows. Certain colonial practices also must be noted and a short history of the development of the creole aristocracy must be made. With the stage and atmosphere set the *dramatis personae* must be introduced for a complete understanding of Chile's early constitutional drama.

Though in the later documents the Chileans and the Spanish Americans in general returned to a strong executive comparable in powers to the chief administrator under the king, in the earliest of their constitutions they reacted against the Spanish type of governor. The captain-general and president of Chile was presumably an almost omnipotent ruler. He was the *alter ego* of the viceroy of Peru who in turn was the *alter ego* of the absolute monarch in Spain. In Chile he was the supreme official of a very highly centralized administration. His power reached to the farthestmost parts of the realm and included military, administrative, financial, religious and judicial functions. He it was who led the troops or directed them in the long series of wars against the Araucanians, the main feature of Chilean colonial history. His colleagues were generally Spanish-born persons whose ability was often inferior, so thought the creoles, to that of Chilean-born individuals, many of them being bankrupt or wretched noblemen who were sent to America, the "refuge and haven of the destitute of Spain."¹

In spite of his honors, guard, titles and official dignity, the captain-general was often involved in unseemly quarrels with other representatives of the king, the *audiencia*, or supreme court, and the church.² Jealousies in regard to matters of precedence, disputes over jurisdiction or debates on matters of law all tended to make observing

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subjects disdainful of the law, but curiously enough not of the persons or institutions involved. The king was venerated and the captain-general was the subject of great homage, as were all his agents, and respect for public officials is still a feature of Latin-American life.³ Withal the important fact is that the Chileans became accustomed to the iron-handed and arbitrary rule of one person. The principle of passive obedience to authority was taught and instilled in the Chileans and other Latin Americans by the king and by the church and created one of the imponderable historical realities the constitutionalists had to deal with.⁴

Many a Spanish official in the New World gave free rein to his acquisitive instincts, which conduced to graft and corruption, misappropriation of royal revenues, malfeasance in office and scandals.⁵ Viceroyes, governors and judges themselves adopted an attitude of indifference toward the enforcement of laws, decrees and ordinances coming from Spain.⁶ Responsibility for all acts during an official's term presumably was determined at its close by a species of trial called the *residencia*. After the person concerned had handed his office over to his successor he or some one else appointed for the purpose was obliged to sit for a stated number of days to hear all complaints registered by subjects about real or alleged injustices committed by him during his rule. Often some of the ill-gotten gains were used to buy off the plaintiffs. The *residencia* is one of the institutions of the old régime continued awhile after the break with Spain. Unfortunately, too, many of the corrupt practices described above were retained.

There were no legislative assemblies in colonial Latin America. The king and his councils made the laws for his American subjects. In no part of the whole system was the Latin American given the opportunity directly

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to influence the legislation which controlled his activities.⁷ A divine-right, absolute monarch felt justified and qualified to govern all phases and departments of the life of his subjects, especially since they resided in territories which were part of his personal patrimony. Because of this relation between the monarch and his subjects there could be no question of "taxation without representation" but there could be a question that was debated in the *cabildos* or town councils and the *juntas* or provisional boards of administration in 1810. In the absence of a rightful king, then a captive in France, did sovereignty pass to his subjects in America or to the French usurper in Spain? According to some of his American subjects it passed to them, and on that assumption they began after 1809 to legislate in their own behalf and thus to satisfy a long felt yearning.⁸

The judicial power was exercised in Chile and Spanish America at large by administrative officials and local courts, dependent in some degree upon the *audiencia* which supervised the general administration of justice. One of the primary functions of that body was to serve as a check on the activities of the executive functionaries. This led to many quarrels and dissensions.⁹ The judges appointed by the crown from among persons born in Spain were not always of the highest type, and like others they often succumbed to the many temptations the New World offered.¹⁰ Flagrant cases of judicial discrimination in Chile are recorded.¹¹ At other times the judges yielded to the importunities of the *encomenderos* or owners of a class of estates, or of other influential persons.¹² Justice was slow and arbitrary.¹³ The red tape which characterized the whole Spanish system in the administration of justice produced the most dissatisfaction among the American subjects of his Catholic majesty.

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Justice meted out in America or in Spain by Spanish-born judges when American plaintiffs were concerned would too often favor Spanish defendants.¹⁴ The long time involved in the prosecution of an average case—many times purposely delayed—was another annoying feature, some cases lasting a hundred years.¹⁵ The general procedure in arrests, detentions, punishments and trials was arbitrary, cruel and irrational.¹⁶ Personal considerations too often weighed in decisions.¹⁷ Nearly all the Chilean constitutions, therefore, emphasized procedural rights and gave much space to reforming the judicial system. The Spanish mode of administering justice was one of the main institutions of the past the Chileans did not want to reproduce and one they were determined to improve.¹⁸ Of the old régime the judicial system was the most changed.

The faulty administration of justice and the attitude of officials toward laws accordingly produced a general lack of respect for them.¹⁹ Many of the laws framed at a distance were devised by persons ignorant of American conditions or to benefit primarily not the subjects but the monarch.²⁰ Remoteness from the king and his councils, the length of time required for appeals, the ignorance of judges, the local difficulties in applying justice, and the exclusion of the creoles from law-making tended to develop further the feeling of disdain for law which characterized and characterizes many Latin Americans. This is another vital historical reality which helps to explain the difference in attitude between Latin Americans and Anglo-Americans toward constitutions and laws. To the latter such things have always been more or less sacred or respected because they were instruments of efficiency and of positive value and represented social needs, but to the former they were never so sacrosanct. The Latin Americans could never impute to lawmakers an objectivity, detachment

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and impersonality which they themselves never felt. Their sense of individualism and of their own importance inhibited them from doing obeisance to an institution which was essentially the product of collective action. Psychological factors with roots too far back in history to be discussed here must be sought to explain the phenomenon. The evidences of its existence are easily given and the ease with which fundamental laws were overthrown is one of them. *Personalismo*, an exaggerated notion of the importance of self, the slow development of political parties, and revolutions are other explanations.

No matter how arbitrarily or subjectively law as such was considered, the Latin Americans became accustomed to it in written form. The enactments in the *Recopilaciones* or Spanish codes might be regarded as constitutions of a sort, and the constant resort and appeal to written law created a reliance upon it which the revolutionary philosophy and the examples of the United States, France and Spain merely enhanced. The addiction to constitutions and written laws has therefore colonial roots, as has the attitude of the Spanish Americans toward law. Though inexperienced in law-making they became devoted to debating, discussing and studying laws and political science.²¹ Thus, all told, the change from dependence to independence with another type of written law was not so abrupt as has often been pictured. Such theoretic knowledge of jurisprudence and political science as the Latin Americans possessed came from schools²² directed by the Church whose place in colonial life must now be examined.

The Church indeed was one of the most influential political, economic and social forces. The Spanish union of church and state needs no elaboration here. Nor need the wide use the crown made of the Church as a political agency be discussed. Suffice it to say that its

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functions were triple. Like the *audiencia* it was to be a check on the civil and military officials; it was supposed to save souls, maintain a high level of morality, and civilize the Indians; and lastly it was to cooperate with the authorities in developing loyal subjects. In order to carry out this program it was given, by specific laws, many purely political functions.²³ Other functions and powers were acquired as a result of its activities in the New World. It became a large landowner,²⁴ the arbiter of customs and the dispenser *par excellence* of culture. Many a civil ruler was virtually the servant of the higher ecclesiastics.

By 1808 the number of the clergy was altogether out of proportion to the total population, and the influence of the Church was greater than that of any other institution.²⁵ With its right to enter into the very marrow of family life it became the economic and social adviser of many of its adherents.²⁶ Its organization was a better functioning machine than that of the Spanish government itself. Its wealth gave it opportunities to spread its power to every city, town, hamlet and community.²⁷ As the controller of education it developed first loyal Catholics and secondly loyal subjects. Its ceremonies, rites and festivals relieved much of the monotony of the colonial régime, and this alone would have made it one of the best loved institutions of the time.²⁸

Every colonial family of prominence must have one of its members a dignitary in the Church.²⁹ This added prestige to the family and garnered greater support for that institution itself. Loyal Christians bequeathed a third of their fortunes or holdings to the Church to prove their loyalty.³⁰ Every holiday and saint's day was observed faithfully; and there were many of them. The *audiencia* was closed at one time for as many days as there were in a half year celebrating ecclesiastical holi-

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days.³¹ In many and sundry ways the Church followed the individual not only from his birth to his death but from morning to night every day of the week.

Whether the Church deserved its place and influence need not enter into the discussion. The fact is that it grew rich and influential with the support of the colonials. The more it grew the greater was the devotion shown to it.³² No royal edict or order altered the unswerving loyalty of the people in this respect. When the new order came into existence the radical and liberal leaders soon found out that one of the strongest forces inherited from colonial days was the Church, and that it could not be trifled with, altered or reformed.

Creole ecclesiastics who espoused the national cause played seemingly incompatible rôles as did many laymen.³³ Revolutionary ideas were adopted at first in almost all matters except in those of religion. Many a clergyman helped to draft constitutions or edited journals with revolutionary ideas, but none favored religious toleration. One of the most important factors in identifying the interests of the Church with those of the creole aristocracy was, of course, the fact that members of the latter had joined the ranks of the secular or regular clergy.³⁴ The principles of both were conservative; their economic interests as landowners were practically the same, and when sons of distinguished families became members of the hierarchy the interests of the clerics and their relatives *ipso facto* were merged.

The religious and military spirit, brought to America from a Spain that had just concluded a long religio-military crusade against the Moor, was enhanced by American conditions. The remoteness of Chile in particular added greater value to the social activities of the Church, and the long, incessant and seemingly interminable war against the Araucanians increased the military

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spirit of the Chileans.³⁵ The ever present military and the all-pervading Church often worked together; but the soldier-priest of Spanish tradition and literature illustrated by Ignatius Loyola seems to have become in Chile a soldier and a priest.

In addition to fighting for the preservation of internal and external security the armed forces had other functions. The captain-general as their commander-in-chief became the prototype of many a future president of the republic. He used the army to quell riots and revolts and as a political force for maintaining order and the spread of civilization.³⁶ An army so employed for two centuries or more was bound to become imbued with a sense of mission not found in professional armies engaged solely in fighting wars.

The army, moreover, had a social position. Many of the outstanding ceremonies of colonial days centered in the honors usually accorded the governor in his capacity of captain-general. All parades and military balls and even regular manoeuvres were watched or attended by all social classes. The colorful and glittering uniforms not only attracted the señoras and señoritas but appealed to the vanity of the wearers as well. It was not only appearances that counted. Being in the army gave many a deserving creole youth a chance to rise in the social scale which the Spanish colonial system generally did not give him.³⁷ In fact the military forces in Chile became very powerful and acquired much prestige because among the officers were found representatives of all the worthwhile families. The higher army officials were very definitely an integral part of the social, political and cultural aristocracy.³⁸

Most of the leading generals participating in the movements of liberation, once they had finished their military tasks, were placed as presidents or supreme directors at

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the helm of the *post bellum* state. In the peace-time measures these military men proposed or enacted, many of them showed a remarkably high degree of general culture and a useful knowledge of many specific subjects. Bernardo O'Higgins in Chile was no mere adventurer, and his dictatorship was grounded on a philosophy he had evolved from his own study and observation.³⁹

A word now must be said about commerce, freedom of the press, the territorial divisions and the treatment of foreigners during colonial days. Spanish policies in these matters went right to the vitals and produced the cancer which according to the creoles threatened to destroy the entire organism.

The commercial monopoly, virtually limiting trade to Spanish ports, censorship of the press, and discrimination against creoles in filling offices were among the elements of the old régime which received prompt notice at the very outset of the new era. In most countries the first act of a revolutionary government was to proclaim freedom of trade. This meant opening the doors not only to goods, but to ideas. And in order to guarantee the free circulation of literature freedom of the press soon followed. In many of the earlier pronouncements the right of nationals to occupy all offices was proclaimed and this was generally sanctioned by most of the constitutions.⁴⁰ As will be observed later, the first flush of liberty was accompanied by a far greater outburst of liberalism than was to be observed after independence was achieved. Realities have a cooling effect.

Colonial territorial subdivisions obviously were made to facilitate administration and to delimit the jurisdictions of royal officials. As settlements were sparse or non-existent in the interior and as the cost of a general scientific location of boundaries would have been a terrific and unnecessary strain on the royal treasury few

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surveys were made. Especially in the case of Chile was the question of frontiers unimportant. Its eastern and northern neighbors owed allegiance to the same crown, and there was no valid reason, accordingly, for the monarch to define precisely its territorial limits. This vagueness was patent in the constitutional descriptions of Chile's territory and later on produced grave boundary disputes and wars.

No foreigner was allowed to emigrate to the New World unless he obtained special permission from the crown. In Chile especially, there were few non-Spanish nationals.⁴¹ With rare exceptions, those found in the New World had come or been introduced surreptitiously. It is easy to understand, therefore, why the Chileans and other Spanish Americans should have reacted against this exclusive policy of Spain. Though they did not throw open the doors indiscriminately to any and all comers their definitions of nationality were liberal. They needed and desired more trade, more enlightenment, more freedom, and to increase their population and revitalize the old blood with new.

The history of the races of Chile during colonial times is quite simple. The aborigines were the Araucanians whose men-folk were slowly exterminated by the long, gruelling, losing wars they fought or by too arduous forced labor. The Spanish soldier, adventurer, roustabout or indigent nobleman coming to Chile generally left his women-folk behind. Marriages or promiscuous attachments between the Araucanian women and Spanish men produced a *mestizo* or half-caste class.⁴² So rapidly did the fusion take place that by 1700, and to the extent that the Araucanians had definitely been subdued, all Chileans spoke Spanish and there were left, so to speak, only two groups, the Spanish and the *mestizo*.⁴³ By 1808 it seems probable that a very small percentage of the

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population could be regarded as white.⁴⁴ During colonial days the Chileans were not proud of this fact and sought to buy their way into the ranks of those deemed white, and that on the presumptive principle that every white man was a gentleman!⁴⁵ This ambition was due, not so much to racial discrimination as to the great economic and social disparity between the Spaniard and the *mestizo*. The creoles generally hated the recently arrived Spaniards who by their activity amassed wealth while they themselves vegetated on fortunes built up by their sires.⁴⁶

The population of Chile in 1810 was somewhat less than 600,000. Of this number 100,000 were Araucanians, found mostly in the South, 20,000 Spaniards, 150,000 creoles, 300,000 *mestizos*, about 4,000 Negroes, and 100 aliens.⁴⁷ The great majority lived in the country on the great estates. Of the total population only 50,000 resided in the thirty towns of which seven alone really deserved that name.

Of these racial groups the creole aristocracy was the one which from 1810 on held the destiny of Chile in its hands. Its culture, wealth and vested interests gave it a position far superior to all the others. It was a relatively small group living in the larger towns and especially in the capital, Santiago.⁴⁸ Historical, traditional and economic factors narrowed the number of the socially elect to fewer than a hundred families. Most Chilean historians refer to twenty families of enormous fortunes who had the last word in most matters.⁴⁹

There were creoles and creoles: those who constituted the aristocracy, the large landed proprietors, and those without great material possessions but who still were relatively much wealthier than the masses. Moreover a social distinction was apt to be made between them as white descendants born in America of parents who had been born in Spain and those whose immediate or more

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remote ancestors had been colonial-born. A difference between father and son thus might depend upon the locality of their respective births. In social as well as political discrimination the creoles were penalized by Spanish policy, though not by Spanish law,⁵⁰ for a condition over which they had no control and which seemed to them extremely irrational and stupid.

Fortunes were originally built up on the basis of land given by the crown. The *encomiendas* were grants of large tracts along with a number of Indians, for whose treatment by the grantees certain stipulations were provided in the patents. The Indian aspect did not affect the constitutional problem, but the existence of such estates and processes of entailment like the *mayorazgos* and *vinculaciones* did. Following European customs, the original owners desired to perpetuate their names and to guarantee to their descendants the usufruct of their fortunes and landed property intact. This gave rise to the institution of primogeniture and entailed estates.⁵¹ But the sons and grandsons and greatgrandsons were often rather indifferent and careless about increasing their inheritances. The more they neglected the material development of their estates the more they devoted themselves to social affairs.⁵²

In this connection an important economic fact is, that the landed proprietors were also the merchants, miners, exporters and importers.⁵³ So there were not developed two or more antagonistic groups with conflicting interests to fight for. Their material problems were identical and their general culture, interests and psychology much the same. Birth in America had a levelling and welding effect, and was probably the most important single force in developing a class or group consciousness. In some countries the Negroes and the Indians manifested a certain feeling of solidarity in great uprisings; but among

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those who passed for white the creoles showed more consciousness of kind than even the Spaniards. They developed a dynamic love for America, for the land of their birth, which held them together even against their ancestors.⁵⁴

The creole families of prominence were generally large and centered about the father or first-born son who had inherited the estate.⁵⁵ He controlled not only his family but thousands of tenants and laborers on his holdings. In the towns he had many clerks or servants in his shops or in his other establishments. Many *mestizos* and poor creoles or Spaniards attached themselves to such a person as sycophants (*pordioseros*) and were always in his retinue or wake and obeyed his every beck and call.⁵⁶ A great Chilean or Latin-American landowner was a reproduction in the New World of the old Roman patrician with his enormous clientele. Thus it is possible to understand how twenty or more families in Chile could dictate to and control the activities of nearly 600,000 people.

Their great political and social center was the *cabildo*, or municipal council in the larger towns, where they spent much of their time. They bought the *varas* or wands of *regidores* (councilmen) and were often as much interested in them as in the duties of their office. Like the ancient *fascies*, the *vara* represented real social prestige but unlike the former relatively little governing power. The social ambitions of the nobility and aristocrats—eighteen or twenty families had obtained titles of Castile—made the towns their rendezvous, and all the culture and control centered there.⁵⁷

The *cabildo*, however, served an important function in giving the creoles a *tribuna* or rostrum where they could set forth their ideas and make eloquent speeches. It became their institution and when the opportunity

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came for them to act on their own responsibility there they utilized it to the fullest. *Cabildos* like that of Santiago acted as the leader at times, as a fly-wheel at others, of the revolutionary movements. Dominated usually by the creole aristocracy, they represented, as has been said, those elements which controlled or owned all the productive forces of the country.⁵⁸

Not all the Spaniards who came to America amassed fortunes, but their peninsular origin made it impossible to class them and their children with the *mestizos* or as members of the lower class. Many of their sons obtained subordinate positions in the colonial government. They were among the few who gained any practical knowledge of administration and many of them were very influential or serviceable during the revolution. Often it was they who assumed the leadership at the outset of the events against Spain. Some wrote books, pamphlets and constitutions, others organized or became members of the first *juntas* and drafting committees. Theirs was, so to speak, a creole bureaucracy which vied with the creole aristocracy for supreme power. Their influence was nothing in comparison with that of the aristocratic creoles, either in social prestige or economic power; therefore their defeat at the hands of the latter was foredoomed. In colonial times the aristocrats could buy the post of *regidor* while their rivals were able to get positions solely as secretaries. Many of these lesser creoles entered the army and Church and some of them made great reputations for their culture and erudition. Not many, however, were able to break down the social barriers which kept them from entering the circle of the aristocracy.⁵⁹

Some of the Spanish administrators, some of the higher clergy and higher officers and some of the creoles were men of quite remarkable culture. Chile was not so for-

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tunate as some of the other Spanish-American colonies, but even so, as soon as they could show their real colors many men of fine minds and ideas emerged. Some were truly erudite, others only relatively. The Spanish proverb, "*En la tierra de ciegos el tuerto es rey*" (In the land of the blind the one-eyed man is king), explains the high position others attained. The general level of education was so low that even those who merely knew how to read were looked up to. The creole aristocracy itself was not much better when it came to literacy than the masses.⁶⁰ All, however, appreciated the value of education even though they did not possess it themselves.

The constitutions reflect these conditions in more ways than one. Their mode of composition and the emphasis on education and the literacy tests for suffrage bring out the low level of culture of colonial days. They also reflect a special state of affairs which partially arose from the compactness of the country. The leaders were all known to each other, either as relatives, friends, neighbors or enemies. A kind of "national provincialism" obtained which interfered in political affairs. These personal interests and enmities are often reflected in specific articles of the constitutions. In an atmosphere comparable in some respects to that of a small town, among people imbued with definite ideas regarding courtesy and family obligations, it was difficult to operate altogether objectively and without regard to personal concerns.⁶¹ The sensitivity of the Latin American is apparent in the provisions made for honorary or life offices to be given to officers who had just finished a term. Their notions of honor and dignity had to be catered to. By giving them posts of the sort they were generally satisfied. These provisions were intended also to keep the incumbents from participating in revolutions.

The early constitutions of Chile and of Latin America,

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finally, have a very real economic interpretation. They were not solely bodies of laws written to satisfy political ideology but expressions of class concern. Many creoles had helped finance⁶² the wars of independence. Still others had specific interests they desired to protect; but similarity with those of individuals back of the American constitution of 1787 ceases there. The creoles can be compared more correctly with the English landed aristocrats, and their general activities and attitudes with those manifested in the House of Lords. They desired more than anything else to preserve a general social and economic system from which their profits were enormous. They wished to hold the political balance of power in order to guarantee the maintenance of the *status quo*. It was the creole aristocracy of Chile that triumphed over all opponents and imposed the constitution of 1833 which preserved its privileges and power.

FOOTNOTES

CHAPTER II.

1 Barros Arana, *Historia Jeneral de Chile*, Vol. V, p. 349. The quotation is from Cervantes.

2 *Ibid.*, Vol. III, pp. 141, 152; Vol. IV, pp. 232, 237; M. L. Amunátegui, *Los Precursores de la Independencia de Chile*, Vol. I, p. 187; Domingo Amunátegui Solar, *Jénesis de la Independencia de Chile*, p. 20.

3 M. L. Amunátegui in *Los Precursores*, Vol. I, pp. 31, 91 and 121, refers to the veneration and respect for public officials in colonial days and speaks of it as a veritable religion.

4 Galdames, *La Evolución Constitucional de Chile*, p. 48.

5 "José Amor de la Patria", "Catecismo Político Cristiano" in *Colección de Historiadores i Documentos Relativos a la Independencia de Chile*, Vol. 18, p. 139: "The metropolis sends every year crowds (*bandadas*) of Spaniards who come to devour our substance and to treat us with unbearable insolence and haughtiness; bands of governors who are ignorant, covetous, thieves, unjust, barbarians, and revengeful; who commit their depredations without rein or fear; because appeals against them are extremely difficult since their countrymen defend them; because the supreme government is three thousand leagues away and there they have relatives and protectors who defend them and partake of the spoils and because they are Europeans and we Americans." This quotation is a fair sample 'of the *Catecismo* attributed to Juan Martínez de Rozas by B. Vicuña Subercaseaux in his *Memoria sobre la Producción Intelectual en Chile*, pp. 23, 24 and footnote. This pamphlet was one of the most influential documents in the revolutionary literature. Galdames, *op. cit.*, p. 102.

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6 Barros Arana, *op. cit.*, Vol. III, pp. 139, 234; "Semanario Republicano" in *Col. de Hist. i Docs.*, Vol. 24, pp. 48, 58; M. L. Amunátegui, *Los Precursores*, Vol. I, p. 136.

7 *Catecismo Político*, *op. cit.*, p. 121: "They (i. e. the European monarchs) made the laws and arrogated to themselves attributes that made them almost the equals of the Creator." *Ibid.*, p. 139, "All the legislation of the metropolis is in behalf of the metropolis and for the ruin and degradation of the Americans." M. L. Amunátegui, *Los Precursores*, Vol. II, p. 329. This writer refers to the minute regulations issued to direct the public and private lives of the colonists.

8 *Catecismo Político*, *op. cit.*, p. 124: "Authority returns to the people, whence it came, it returns to its pure and primitive source whence it emanated." Also, p. 125: "The inhabitants and provinces of America have sworn loyalty solely to the King of Spain... they did not swear loyalty to the inhabitants and provinces of Spain."

9 See footnote 2, page 52.

10 Barros Arana, Vol. VII, p. 329.

11 *Ibid.*, Vol. IV, p. 235; also Galdames, p. 50.

12 Barros Arana, Vol. IV, p. 235.

13 *Ibid.*, Vol. VII, p. 328.

14 Galdames, p. 50; see footnotes 5 and 7 on pages 51 and 52.

15 Barros Arana, Vol. VII, pp. 325, 330.

16 *Ibid.*, Vol. IV, p. 259; Vol. VII, pp. 330-331.

17 In regard to the evils of the colonial administration of justice the most eloquent testimony is that obtained by implication. The great concern shown in reforming the judiciary speaks more loudly than any specific criticisms or references to isolated cases of injustice.

18 *Catecismo Político*, *op. cit.*, p. 140: "The metropolis has wanted us to seek justice at a distance of 3,000 leagues so

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that in the court we should be robbed, sacked and plucked impudently and shamefully."

19 Barros Arana, Vol. III, p. 139; Vol. IV, p. 234.

20 See footnote 7, page 52.

21 When discussions veered to specific laws of Spain and to questions of the maladministration of justice as observed in their own courts the creoles discussed them *sotto voce* in their homes. Galdames, p. 50.

22 Barros Arana, Vol. VII, pp. 487, 491. Many of the creole leaders were graduated in law from the University of San Felipe in Santiago or from the University of San Marcos in Lima.

23 In one of the numbers of the "Semanario Republicano", *Col. de Hist. i Docs.*, Vol. 24, p. 20, reference is made to the resort to "Jesus Christ as a patron of injustices". For specific laws giving the church political power see Barros Arana, Vol. IV, pp. 237-238; Vol. V, p. 325. For a discussion of the church in the political life see M. L. Amunátegui, *Los Precursores*, Vol. I, pp. 159-225.

24 Barros Arana, Vol. IV, p. 264; Vol. VII, p. 347. See Galdames, p. 48, for influence of bishops on governors. The governor exercised the right of advowson in Chile.

25 Barros Arana, Vol. IV, pp. 249-251, in 1630; Vol. V, p. 322; Vol. VII, p. 345.

26 *Ibid.*, Vol. IV, p. 251; M. L. Amunátegui, *Los Precursores*, Vol. III, p. 45.

27 Barros Arana, Vol. VII, pp. 345-349.

28 *Ibid.*, Vol. V, pp. 322-324.

29 *Ibid.*, Vol. IV, pp. 251-252. See footnote 34, page 54.

30 *Ibid.*, Vol. VII, p. 347 and note 51 on the same page.

31 *Ibid.*, Vol. IV, pp. 286-287; Vol. V, p. 324.

32 *Ibid.*, Vol. IV, pp. 245, 249, 251; Vol. V, pp. 324-325;

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Vol. VII, p. 345. Barros Arana stresses the growth of devotion to the church.

33 Camilo Henríquez (1769-1845) is one of the best illustrations of the duality shown in these movements. One of the most ardent revolutionaries, in his character as a monk he was reactionary as regards religion. He was one of the founders of the Chilean press and edited *La Aurora*, *El Monitor Araucano* and *El Mercurio de Chile*. He is the author of the celebrated "Proclama", (*Col. de Hist. i Docs.*, Vol. 19, pp. 223-231), and wrote many articles for other journals. He received the attention of the Inquisition for reading eighteenth century French revolutionary philosophy. A short biographical sketch appears in Pedro Pablo Figueroa's *Diccionario Biográfico de Chile*, Vol. II, pp. 89-90. There is also a biography by M. L. Amunátegui.

34 Two sons of Martín José Larrain y Vicuña of the celebrated family, "de los ochocientos", were priests, Joaquín Larrain y Salas and José Vicente Larrain y Salas. See Figueroa, *Dicc. Biog.*

35 Galdames, pp. 14-15.

36 References to the military forces of colonial days are found in Barros Arana, Vol. III, pp. 122, 127, 132-133; Vol. IV, p. 277; Vol. V, pp. 341, 352; Vol. VI, pp. 362 ff.

37 Figueroa, *op. cit.*, Vol. I, p. 296, in his little sketch of José Miguel Carrera notes the fact that José Miguel was made a cadet of the *Príncipe* regiment when he was only a year old and a lieutenant when he was only six. These titles, according to Figueroa, were much coveted by the patrician (*patricias*) families. Young Carrera's father was the commander of the *Príncipe* regiment. The Carreras belonged among the outstanding Chilean creole families.

38 Barros Arana, Vol. VI, pp. 365-366: "The troops, especially those of Santiago, acquired a great prestige because among the officers were found all the persons of any attainments in the colony, because there was no other way to gain social lustre among their compatriots."

39 Not only O'Higgins but Bolívar, Sucre, Flores, Santan-

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der, Páez, and other generals were rewarded for their military victories by the highest civil office of the nations they had brought into existence.

40 Freedom of trade, thought and publication and the right of natives to serve in administrative offices fill many pages of Chilean and other Latin-American literature. They occupy almost as much space as the eulogies of representative republican forms of government.

41 For a full discussion of the Chilean races see Alejandro Fuenzalida Grandón, *La Evolución Social de Chile*.

42 "El Semanario Republicano", *Col. de Hist. i Docs.*, Vol. 24, p. 30; Barros Arana, Vol. IV, p. 227: "Thus there was formed the mass of the people which replaced the indigenous race and filled the void (i. e. created by the extermination of the men). Barros Arana, Vol. V, p. 290.

43 Barros Arana, Vol. V, p. 291. Barros Arana, however, later gives the number of Araucanians as 100,000 in a total population of 500,000. This author states, *loc. cit.*, that the Araucanian language had disappeared at the end of the seventeenth century and that Spanish was universal.

44 This is a much mooted point. Many historians and sociologists of Chile claim that there was Indian blood in all the so-called whites. Others assert that Chile is composed of a purer and less mixed race than any other Latin-American nationality. Barros Arana (Vol. VII, p. 440), states that all were of some slight color and that it was difficult to distinguish a creole from a mestizo. In the same volume, p. 342, is the following clause, "the creoles be it of pure Spanish blood, or mixed with Spanish and Indian". Vol. III, pp. 137-138, has a good description of the *mestizo*.

45 *Ibid.*, Vol. VII, pp. 429-440, regarding the creoles.

46 *Ibid.*, p. 430. Barros Arana refers to the Spanish saying, "*Padre mercader, el hijo caballero, el nieto pordiosero*." The "father a trader, the son a gentleman, the grandson a beggar or sycophant" is a broad translation which describes rather well a widespread custom.

47 *Ibid.*, Vol. VII, pp. 315, 421 ff.

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48 Galdames, pp. 9-10. Barros Arana, Vol. IV, pp. 284, 287; also Vol. VII, pp. 455 ff. M. L. Amunátegui y B. Vicuña Mackenna, *La Dictadura de O'Higgins*, p. 42. Hereafter this work will be referred to as Amunátegui, *La Dictadura*.

49 Galdames, p. 45. Barros Arana, Vol. VII, pp. 364-365 and footnotes. Amunátegui, *La Dictadura*, p. 42. These authors refer to a hundred persons as the initiators of the movement. Barros Arana and Galdames merely speak of twenty great families.

50 The discrimination against the creoles was not countenanced by the Spanish laws. Before the law the creoles and Spaniards were equal. Barros Arana, Vol. V, p. 348.

51 For a discussion of the *mayorazgos* and *vinculaciones* see Barros Arana: Vol. VII, p. 363, for those around the city of Santiago; p. 364, for the definition of the *vinculaciones*, which "were other properties, houses, and farms belonging to certain families, whose sale and subdivision were prohibited by law". Barros Arana says that the purpose was to preserve the name and prestige of the house. The eldest son became responsible for the other members of the family. See also Vol. VII, pp. 431-436. Also Amunátegui, *La Dictadura*, pp. 41-56.

52 Galdames, p. 43. Or, according to Amunátegui in *La Dictadura*, p. 52, to quarrels between families.

53 Barros Arana, Vol. VII, p. 429. Galdames says, (p. 45): "This aristocracy furthermore came to possess a very powerful economic influence until it had concentrated in the hands of its principal men the greater part of the productive forces of the country." He also says, (p. 43), that the ownership and exploitation of land were traditionally dignified occupations but so were the ownership and direction of other industries so long as the manual labor was done by underlings. Also Amunátegui, *La Dictadura*, p. 42.

54 Barros Arana, Vol. VII, pp. 327, 439 and all the revolutionary writings, their constitutions, their declarations of independence, etc.

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55 M. L. Amunátegui, *Los Mayorazgos i Títulos de Castilla* (3 Vols., Santiago, 1901-1904). Galdames, *loc. cit.*, in note 56.

56 Barros Arana, Vol. VII, pp. 364-365 and note 5, refers to the eighteen *mayorazgos* or primogenitures, and their clientele. In referring to the aristocracy which controlled all the wealth of the country (see footnotes 51 and 53) Galdames, (p. 45), makes this statement: "Their twenty noble stocks were the basis of another equal number of opulent families of multiple and vast ramifications, who ordinarily obeyed the voice and command of their respective chief, the possessor of the primogeniture title. They served as loyal and diligent administrators and executors of the affairs which the *mayorazgos* undertook." This same author says further: "Thus they dominated at will the mass of Spanish-Indian *mestizos* and the individuals of their own class less moneyed and less fortunate." In Amunátegui, *La Dictadura*, p. 41, reference is made to the influence of the heads of such large families as the Larraíns, Errázuriz and Eizaguirres on the city-folk, and on the rural workers as patriarchal and feudal lords. On p. 44 it is stated that if a dozen of these aristocrats were to take hold of an idea or plan it was just as good as realized, so far-reaching was their influence. The masses followed them blindly and (p. 45) "The majority of the country was those magnates."

57 "Semanario Republicano", *Col. de Hist. i Docs.*, Vol. 24, p. 24. Barros Arana, Vol. VI, p. 203; Galdames, p. 53. Vol. VI, p. 203. Galdames, p. 53.

58 Galdames, p. 53. Barros Arana, Vol. VII, p. 327. This author states that though the *cabildos* no longer had their earlier prestige and power, which was lessened as much by the activities of the local governors as by that of the king, they retained a remarkable *esprit de corps* of dignity and righteousness while making petitions in the name of the city as well as in their policies of defense and their activities in behalf of the cities and citizens which were partially derived from patriotism and partially from necessity. B. Vicuña Subercaseaux, (p. 125), quotes Vicuña Mackenna as saying "the *cabildo* had a soul".

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59 Agustín Venturino in *Sociología Chilena*, p. 220, suggests that one of the causes for O'Higgins' failure was the absence of a large distinguished family to support him in his social and political struggles with the aristocracy. See also Amunátegui, *La Dictadura*, pp. 47-50. On p. 49 he says, "The great proprietors cause the change... the lawyers direct the movements."

60 *Infra*, p. 155. The very low level of culture is discussed by nearly all the writers mentioned in this chapter.

61 Amunátegui, *La Dictadura*, p. 47: "All the individuals of the affluent classes were related by blood, or were friends or were partners in business..." Also, "Chilean society was subjected to a kind of domestic régime."

62 "El Monitor Araucano", in *Col. de Hist. i Docs.*, Vol. 26, *passim*. There appear many lists of donations made by the creole aristocracy for the support of the war.

CHAPTER III.

CONSTITUTIONS AND GOVERNMENTS OF THE "PATRIA VIEJA", 1810 - 1814

The first three short, inchoate constitutions of Chile were written in the period before independence had been wrung from the Spaniard. They belong to the years of the so-called *Patria Vieja* or "old fatherland". It was a period of frayed beginnings, of halting and hesitant steps, when some Latin Americans were beginning to think independently for the first time. Many of these instruments of government came into being when even geniuses in political science would have had to fail. These primitive constitutions were very much the products of their circumstances, and outside of their setting are practically valueless as instruments of law or political organization. But because they are the first ones and because they reveal certain problems, tendencies, ambitions and hesitant revolts against the past they assume genetic and historical interest.

During the time of the *Patria Vieja* there were five constitutional documents. Those of 1811, 1812 and 1814 became law while two others remained merely drafts. All five were the result of the interaction of personal, social, economic and political forces operating throughout the revolutionary era and are explicable as episodes in a revolution whose coloring changed with the personalities who in turn arose to direct its course. These personalities represented either their own ideals or those of the class to which they belonged.

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There were of course the reactionaries, members of the Spanish nobility or administration who ceased to be a social and political factor after 1810. Next to them were the moderates, the creole aristocrats, whose interests and lack of a fixed plan of action tended to make them appear as reactionaries. They had no influential leader to guide their steps until long after independence had been achieved. The liberals or radicals were generally younger members of the creole aristocracy or creole functionaries or lawyers who stood almost from the outset for independence and republicanism. The military members of this class took the center of the stage throughout the *Patria Vieja*. The unanimity of action and purpose of all the classes was shattered by rivalries between families and even within a family itself, and by the jealousy which the town of Concepción developed toward Santiago, the capital. Santiago, as has been said, was the cultural center; Concepción, on the other hand, was the military headquarters and the seat of two landed proprietors who became influential leaders. Coquimbo, largely a mining center, had its weak jealousies but was not able to direct or change the course of the revolutionary stream.¹

The literary and philosophic groundwork for the revolution was prepared by three or four outstanding personalities. Manuel de Salas² was the great educator of the period, whose activities in behalf of advanced educational propaganda began in the latter part of the eighteenth century. From his pen came some of the best literary products of the revolution. He was a typical creole, coming from a large, affluent family with great connections. He served on many revolutionary committees and was exiled to the island of Juan Fernández during the temporary restoration of Spanish rule. When he returned to Chile he laid the foundations of its educational system.

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Camilo Henríquez,³ the monk, was another of the literary revolutionaries. As the founder of the Chilean press, his contributions to the spirit of independence and revolutionary philosophy were incalculable. He too served in the revolution in many capacities. Both Salas and Henríquez were imbued with a sincere idealism and gave unstintingly of themselves to the cause. The atmosphere favorable to the revolution was created in large measure by their efforts. While their services continued for many years after the defeat of the Spaniards another of the forerunners was not so fortunate.

This was Juan Martínez de Rozas,⁴ of Concepción, a representative of a large, aristocratic family and clientele in the province of that name, who became the commanding figure in the earliest days of the revolution. A radical who capitalized the experience he had gained as a counsellor to various Spanish colonial administrative officials, he was also considered one of the leading cultural and social lights; but his erraticism and weakness caused him eventually to be deprived of the leadership, first by the moderates and later by José Miguel Carrera, and he died in exile. He was a victim of family rivalries and of the military needs of the moment.

From the latter part of 1811 to 1814 the all important individual was José Miguel Carrera,⁵ whose family was also one of the largest and wealthiest. During the period of the *Patria Vieja* his father and his two brothers were involved at one time or another in all the revolutionary movements. Carrera was primarily a soldier, adventurer, patriot and actor. Very attractive and commanding in figure, he had all the elements to make him a popular hero. His education, however, was meager, and therefore his contributions, which were manifold and of lasting value, did not come from a well thought out plan but

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emanated from his quick appreciation of needs, from the advice of his friends and from great native ability.

Though Carrera had been to Spain where he met José de San Martín, Carlos María de Alvear and others, he does not seem to have returned with a political philosophy as did Bernardo O'Higgins, for example. He did come back, however, a confirmed liberal and revolutionary, but he was too much the soldier to interest himself overmuch in intellectual or political problems. He interrupted his education in Spain to join the army. Yet, when in Chile he met problems and obstacles, he dealt with them with decision and often with great success and acumen. He was a dictator but felt the need, that O'Higgins later felt, of catering to the legalistic and philosophic formalism of his compatriots.

Carrera was ambitious and arbitrary, but according to some of his pronouncements and manifestoes he seemed to have developed a democratic spirit and a real interest in popular sovereignty. Whether these were sincere or not is questionable. Their publication and their distribution undoubtedly contributed to the rise of the democratic and republican spirit of the Chileans—as such his utterances belong to the revolutionary literature. But his constitutional essay made material contributions to Chile's public law and virtually sundered the connection between Spain and Chile. His quarrels with his brother José Juan, the rivalry with the Larrain⁶ family with its vast ramifications and tremendous influence, the disputes with Martínez de Rozas and Bernardo O'Higgins not only caused great political rifts but gave the Spaniards a chance for reentry which a more united country would not have afforded.

The Larrains had their "eight hundred" but Carrera could number his followers by the thousands who came to constitute a sort of party. In the days of the *Patria*

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Vieja there were no political parties⁷ as such, but one became known as the *Carrerista*; it was radical. As O'Higgins came into prominence an *O'Higginista* or conservative party was formed. Among the intellectuals there were some differences in regard to principles; but, as has been observed, the vast majority of the people were ignorant of or indifferent to abstract ideas. They were primarily loyal to the great *caudillos* or partisan chiefs. These personages were familiar, concrete and comprehensible to their followers. Federalism and centralism were alien, unintelligible words. The *caudillos* had money, estates, jobs and positions and talked plainly.

With the revolutionary literature paving the way and the creoles assuming command, it was not surprising that after the early chaotic days following the "captivity" of Ferdinand VII of Spain and his royal sire the patriots in Chile should show a desire to "nationalize" the administration. The *cabildo* of Santiago assumed the leadership of the so-called *patriotas* while the *audiencia* continued as the bulwark of the royalists. The celebrated pronouncements of the Spanish Council of Regency and the *Catecismo Político-Cristiano*, a creole manifesto, tended to increase the desire for emancipation from the revolutionary committees in the mother country. The *cabildo* prevailed upon the captain-general pro tempore, the Conde de la Conquista, to call an open session of the *cabildo*, which met on September 18, 1810, in Santiago and created a *junta de gobierno*, or governing board, composed of a president, vice president, five *vocales* (members) and two secretaries. This body, acting as a government *de facto*, immediately inaugurated a number of far-reaching reforms which revealed the state of mind of the creoles. One of the most important was the establishment of freedom of trade. The junta also decided to call a congress and issued orders for the election of deputies. A

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revolt of the troops with the proven complicity of the *audiencia* caused the junta to dissolve that high tribunal.⁸

After some complications in the elections the congress met on July 4, 1811.⁹ Three groups were represented among the forty-two deputies: three royalists, the majority who desired certain peaceful reforms, and the radicals who would be satisfied with nothing less than independence and a republican form of government.¹⁰ O'Higgins, Rozas and others belonged to this radical faction. The last-named were so completely outnumbered by the other groups that they withdrew from the congress when the question of the organization of an executive power came up. As it was to be constituted, their views would have no representation at all. This executive power was created by the "Constitution of 1811 or the Regulation for the Executive Authority" on August 8, 1811.¹¹

This brief and confused document, accordingly, was framed by the moderate majority of the first national congress of Chile,¹² a body very jealous of its power and firmly entrenched in the belief that it alone represented the nation's will.¹³ The professed aim of the instrument was the creation of an executive to achieve greater efficiency in the control and regulation of Chile's administration.

The government outlined was extremely simple; the executive function was to be exercised by three incumbents, along with a secretary and an advisor; the congress should continue to serve as the representative of the people, and incidental references are found to tribunals and judges of the old régime. This constitution of 1811 contained nineteen articles and a preamble.

The preamble referred to the great need of separating the powers and fixing their limits so that the congress could devote itself to the high objects for which it was assembled. Therefore, it went on to say, the congress

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decided to delegate provisionally¹⁴ certain important functions to a collegiate body with the title of Provisional Executive Authority which should govern according to the rules outlined in the constitution. One of the prime duties to be given to the executive according to the preamble was the cognizance of violations of the law, but in the first article that function was reserved to the congress itself as the representative of the general will of the country. The congress also should retain control over foreign relations, the right of advowson, the army, and most of the civil appointments.¹⁵ It was to hear all appeals from acts and decrees of the executive.¹⁶ The congress also should have the right to create or suppress offices.¹⁷

The executive might not interfere in the administration of justice, except in matters relating to government, war and the treasury. But these matters were to be the concern of special courts which were described.¹⁸ The executive was given the power to hear and pass on cases of treason, yet even here the congress made a reservation that it should not altogether be precluded from taking a part therein.¹⁹ The executive might issue warrants on the treasury for amounts up to 2,000 pesos, but for greater amounts it would need the sanction of the congress.²⁰ The congress also was to take the oaths of office of the executives, who should be subjected, moreover, to the *residencia*.²¹

Faint echoes of Montesquieu are discernible in the preamble. In creating a plural executive the congress ran true to type. All of the constitutions promulgated shortly after the Spanish colonial system went to extremes. One-man power had become so distasteful that for a brief time plural executives surrounded with all sorts of checks and limitations were to be the rule.

The constitution of 1811 did exactly the opposite of

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its declared purpose. It confused governmental powers, creating a congressional servant and not an executive.²² The moderates of the congress did not intend to surrender a control rather easily obtained, but their ignorance of political science and of government was still too great. The inexperience of its framers and their unfamiliarity with constitutional practice and language were evident enough in this first constitutional essay.²³

Every creole faction that got into power determined to keep the political plum as long as possible.²⁴ This indeed was the primary object of the early constitutions of Chile.

The executive junta created on August 10 soon fell before an uprising led by José Miguel Carrera who made himself master of ceremonies and the mouthpiece of the radicals.²⁵ Carrera renovated the congress and the *cabildo* with radical elements and set up a new executive junta, which made itself recognized by the country at large. Some of its many reforms were notable. It bettered the local administrative machinery; created a supreme court of justice; abolished certain purchasable municipal offices and made them elective; it suppressed parochial taxes and abolished slavery. The congress also broke off relations with Peru and sought to strengthen those with La Plata. Carrera's creature, however, was not so grateful to its creator as he deemed it should be.²⁶ He was not given a position in the government or recognized as the leader of the revolution. So on November 15, 1811, he and his brother Juan José provoked a new military uprising. The pretext used was that the people²⁷ were grumbling and had had no part in these movements; Carrera therefore felt justified in using the army to reestablish the principles of representative government.

The army then coerced the congress and junta to call

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at Santiago a new municipal council in open session which should name a new governing board, composed of three persons representing the provinces of Santiago, Coquimbo and Concepción. Carrera was one, Caspar Marin and Bernardo O'Higgins were the others. Friction was inevitable and the latter two resigned. Carrera promoted a third military *coup* and on December 2 proclaimed himself dictator.²⁸ During his dictatorship several important steps were taken. A flag was adopted, the first newspaper appeared, the first public printing press was set up, a new plan of primary education was formed, and the National Institute and the national library were founded. Not all the reforms were cemented because the noise of the reactionary wheels in 1813 began to turn the attention of the Chileans to a matter of greater moment—the sealing of their independence. But before this happened two constitutions were to be written, one by Joel Roberts Poinsett,²⁹ a diplomatic agent of the United States, and the other under the direction of Carrera.

When Carrera began to consider the matter of a constitution he discussed the question with Poinsett and seems to have requested his collaboration.³⁰ At any rate it has been well established that a committee to draw up a constitution met at the American's home. On this committee were Carrera himself, Manuel de Salas, Camilo Henríquez, Francisco de la Lastra and several others. Poinsett worked on a constitution of his own, which he presented to the committee for consideration. In picturesque Spanish he made an attempt to give Chile a Chileanized form of federal government, but his inexperience in matters of political science was very evident. He made great concessions to local conditions by acknowledging the aristocratic tendencies of the creoles, by recognizing the Roman Catholic Church, and by giving the

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provinces greater autonomy at a time when Concepción especially, under Martínez de Rozas, was opposing Carrera's rule. It was an instrument rather original in spirit and organization.

The draft of this document contained thirteen chapters and forty-eight articles.³¹ There was to be a "national congress of the United Provinces of Chile" composed of two houses, one a chamber of councillors (*Sala de Consejeros*) and another of senators, whose collective address was to be that of "majesty" and the address of each member "honorable". The first house should be composed of two representatives from each province with a term of six years, while the senatorial term was for two. The senate should approve, amend or regulate the projects and plans of the councillors. The latter were to have the exclusive right to promote and foment "establishments, laws or beneficial reforms . . . in all political, civil, military and ecclesiastical branches".³² The powers of the congress as a whole were comparable to those of a normal legislature. Some of the rights of man the instrument enumerated were copied in Carrera's constitution of 1812.

In Poinsett's project there are repercussions of the federal aspects of the American constitution of 1787, especially in the distribution of powers between the government of the union and that of the provinces. The executive was to be styled *Gran Jefe de las Provincias* (Great Provincial Chief) and chosen by electors for four years along with a species of lieutenant-governor to serve as a vice-executive. The *Gran Jefe* should be the generalissimo of the armed forces, and his other attributes were like those of the President of the United States. His powers in reality were not very great; and it was in this respect that the American's project probably veered farthest from the ideas of Carrera who wanted a constitu-

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tion that should not lessen his authority. The judiciary was somewhat similar to the one in the constitution which was adopted in 1812.

In a letter to Carrera Poinsett explained some of the deficiencies of his project, and stated that his purpose was to separate the powers effectively without hindering the efficiency of the government. He strongly recommended the abolition of the *cabildos* which he considered "extremely harmful for the preservation of the republican ideas".³³ Even though Poinsett's draft was rejected, he coöperated with the other members of the committee on their project, which was accepted;³⁴ but it seems correct to assume that the constitution of 1812 reflected mainly the ideas of Carrera and that it was in every way his creation³⁵ even though its real author is unknown.³⁶

One of the personal factors in constitution-making is neatly illustrated at this point. The Carrera family was a bitter rival of the Larrains, as has been intimated. The latter held too many commanding positions in the government and with their clientele they wielded too great a power to suit their rival. José Miguel Carrera as the real leader of his family was determined that the Larrains should not "usurp" the leadership of Chilean affairs any longer.³⁷ His rationalizations appear in the preamble to his constitution of 1812; his real reasons for issuing it were not the sort he cared to make public.

The structure of government provided for in that state paper was also very simple: Ferdinand VII was the king in whose name a *Junta Superior Gubernativa* (Superior Governing Board), composed of three persons, was to exercise authority; two secretaries were to assist the executive; there should be a senate of seven members; and the *cabildos* were to be elective. The judicial power was vested in the ordinary tribunals and magistrates.

The "Political Provisional Constitution" of 1812³⁸ had

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twenty-seven articles and a preamble. The preamble, much longer than that of 1811, breathed an entirely new spirit. It began with a reference to the unfortunate events that had befallen Spain and called upon the provinces to prevent a similar fate to themselves and to forestall a general ruin to which the decadent representatives of the old corrupt government were leading them. Thus Chile, it said, imitated other parts of Spanish America and governed itself. Then followed a number of justificatory statements to prove the wisdom of this independent action, such as the atrocious abuses of representatives of the sovereign in the peninsula and in America, the iterated warnings of friends of Chile regarding traps laid by its hidden enemies, the approval of respected corporations³⁹ and of individuals of character and probity, and lastly, the success of those who honorably and with the loftiest of intentions were leading the people and who had assembled in one place the "representatives of the will of all the inhabitants of this vast realm".

Neither here nor elsewhere in Spanish America, the preamble went on to say, was it possible to evolve a perfect and well-thought out plan of action from the beginning. To obviate the most imminent evils, the sole purpose was to evolve a code which would not set more limitations to those who had been deemed fit to govern than what was offered by their own virtues, and to those who should obey, than that of their own docility. The enactment of more complete laws would have to be left to those whom the people should depute for the purpose, and the assembling of these deputies was one of the primary concerns of the government. Conditions, however, did not warrant the belief that this could yet be done. In order to dispel the uncertainties that ignorance of governmental principles might produce, and to avoid the destruction of the unity so essential to the common

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weal, it was thought best to publish in advance the bases on which the government should rest. It was believed that they were in accord with the general will. But the assembly to be called would have the imprescriptible right to alter the provisional constitutional regulations.

This preamble with its references to a "vast realm" and to the "free will" of all the inhabitants—obtained with guns—is one of the few instances in Chilean constitutional history where there is a marked departure from the realities. But even these optimistic flights are conservative as compared with many preambles issued in other countries.

The twenty-seven articles treated briefly all the most important matters usually found in a constitution. The religion was always to be the Catholic Apostolic.⁴⁰ The constitution was to be drafted by the representatives of the people and had to be subscribed to by Ferdinand VII.⁴¹ As his representative a Superior Governing Board should rule.⁴² This power was to be exercised by the then rulers of Chile whose patriotism and virtues had been recognized by the people. If vacancies should occur in the Board they should be filled from a signed list or petition made in the capital, which the provinces would have to sanction.⁴³ One of the most important articles was the one that stated that no decrees or orders emanating from any authority or tribunal outside of the territory of Chile could have any effect; and that those who might attempt to put them into effect would be punished as state offenders.⁴⁴

Another article was bold and *sui generis*: "If any of the magistrates, which it is not expected, should take a step against the general will as declared in the constitution, power will immediately revert to the hands of the people who shall condemn the act as treasonable, and the violators shall be responsible for such act or acts."⁴⁵

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There was to be a senate without whose sanction in certain important matters the executive might not act. These *negocios graves*, or serious concerns, were the imposition of the taxes, the declaration of war and of peace, coinage, alliances and treaties of commerce, the naming of diplomats, the maintenance and maneuvers of troops, disputes among provinces, the appointment of governors and other local officials, the granting of letters of marque and reprisal, the creation of new offices, foreign relations and amendments to the constitution.⁴⁶ An echo of the American constitution and of Poinsett's draft was the statement that "all matters not expressly delegated by this constitution are reserved to the sovereign people".⁴⁷ The senate was to subject the members of the governing board to the *residencia* with the assistance of the Tribunal of Appeals.⁴⁸ All officials had to take an oath to support the constitution.⁴⁹

Every six months a report of the receipts and disbursements of public revenues was to be published.⁵⁰ Another clause stated that "these invariable rules will only be suspended if the security of the country is menaced".⁵¹ This provisional constitution also had to be subscribed to by the provinces.⁵²

Of the three constitutions in the period 1811-1814 this was the only one with a bill of rights.⁵³ Several of these were procedural and others substantive. The general principles of them were: the inviolability of the person and of his belongings; equality before the law and liberty of the press, with reservations regarding offenses to religion and customs. Every citizen had the right to due process of law in all judicial matters. He should be free to move about. "The Spaniard is our brother. The foreigner ceases to be an alien if he is useful; and all unfortunates who seek refuge here shall find not only an

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asylum but hospitality and assistance, if they be worthy of them."⁵⁴

This document of Carrera, which was more important for its emancipatory tone than for anything else, marked an advance in political science. It introduced certain new principles into Chile's law, such as the sovereignty of the people, their inalienable rights, and a peculiar type of senate.⁵⁵ This consultative and supervisory body appeared, with slight variations in some of the later constitutions also. The noticeable omission of the word Roman in describing religion, furthermore, has given rise to much debate. Basing an opinion solely on the *Reglamento* itself, it would seem to be an effort to reconcile the article on religion with the one which denied the right of all foreign powers or authorities to issue decrees for Chile.⁵⁶ This omission, however, raised such a hue and cry⁵⁷ that henceforth no one but a pronounced liberal dared to lay himself open to the wrath of the Church. War, however, was on the horizon.

The zealous viceroy of Peru, loyal to Spain, had long been a menace. Now he began to put into practice a plan for reducing Chile and La Plata to dependence again. One army should invade La Plata from upper Perú (the present Bolivia), and the other Chile from Chiloé, an island off the Chilean coast hitherto dependent as a military province on the viceroy of Peru. Valdivia in the south was a reactionary hot-bed and by March, 1813, half of Chile was in the hands of the royalists.

When this became known in April the upper classes requested the junta and the senate to take stringent measures. Carrera was appointed general-in-chief and his two brothers and O'Higgins were among the higher officers of this first Chilean army which was not very successful in a war that became exceedingly cruel. Because it was partly a civil war and for other reasons there

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arose demands for peace and for the removal of Carrera. He and his brothers accordingly were relieved of their commands and fell, almost immediately, into Spanish hands; and O'Higgins was made general-in-chief. The capital was being threatened by the royalists when an open session of the municipal council forced the junta to resign and to concentrate power in the hands of a Supreme Director, Francisco de Lastra.

On March 14, 1814, five high functionaries were chosen by Lastra and the heads of various corporations to draft a constitution to legalize his position as Supreme Director.⁵⁸ Two were justices of the superior tribunals, one was a vicar, one a sergeant major, and the other was Camilo Henríquez, who was becoming disillusioned with it all. The character of these men explains the tone of this brief document. The outcome of the war was very dubious and prudence was the better part of valor.

The government according to this document was to consist of a Supreme Director and a consultative senate. For the provinces a new office was created, that of governor-intendant, who had an assistant to serve also as the war auditor (*auditor de guerra*). The Director had three secretaries elected by the Board of Corporations (*Junta de Corporaciones*.)

The constitution of 1814⁵⁹ consisted of thirteen articles and had no preamble. Briefly it stated that the critical circumstances required the concentration of the executive power in the hands of a Supreme Director with all the attributes which the junta had enjoyed since September 18, 1810.⁶⁰ With the exception of matters regarding war, treaties, new commercial establishments and taxation, his powers were to be exceedingly broad.⁶¹

The governor-intendant should replace the executive in case of his absence or illness.⁶² At the end of his term

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he should be subject to the *residencia*, the officiating judge of which should be chosen by the congress. If the congress had not been convoked the judge for the *residencia* should be elected by the corporations.⁶³ The salary of the governor-intendant should be 4,000 pesos. He was to preside over the *cabildo*.⁶⁴ An article refers to the seating of the various officers in that body.⁶⁵ The consultative senate of seven members was to be chosen by the Supreme Director from a list of twenty-one names presented to him by the Board of Corporations. They were to be unsalaried and should elect their own president—a new one every four months—and a secretary. The internal régime was to be the same as that of the old senate.⁶⁶

This was the last of the constitutions put forth during the pre-independence period and, like others in Latin America, was issued on the eve of the outbreak of hostilities. Principles never won a war but men did. Even the most liberal came to recognize that Dantons were needed until the royalists were defeated. Thus there was generally a document similar to this constitution of 1814 creating a unified and quasi-omnipotent executive. The tone of this Chilean document showed a certain timidity—a hesitant desire to be two things at once: to appear royalistic while being in reality revolutionary. There were no rights of man provided for, the senate was comparable to the *audiencia*, the executive similar to the old captain-general and in other ways the document had a colonial flavor.⁶⁷ The language was somewhat confused and few additions to Chilean constitutional history were noticeable. One matter of interest was the importation of the term "Supreme Director" from Buenos Aires.

Thus ended the first period of Chile's constitutional history. Three brief instruments of government had been introduced. Very much the products of their en-

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vironment and of their time, they were crude and inchoate. One thing was fixed, and that was a strong executive. This was to remain for many years a marked characteristic of Chile's constitutional history.

Both sides were weary, business was paralyzed, and because, as has been said, the war was a civil struggle in many respects both sides agreed to the treaty of Lircay (May, 1814) which recognized Ferdinand VII, and Chile anew as a province of the monarchy. As at other times, those who favored the continuation of the war pinned their hopes on Carrera who had escaped from his captors. Carrera in fact issued forthwith a pronunciamiento and declared a new dictatorship. O'Higgins and others were equally intent on not letting Carrera rule again and another civil war broke out when the arrival of Osorio, a Spanish general, was announced. The patriots buried the hatchet to face the greater enemy. The battle of Rancagua (October 1-2, 1814) was disastrous to the Chilean insurgents. This defeat, coinciding as it did with the reaccession of Ferdinand VII, meant for Chile a complete *volte face* to the past. The "*Patria Vieja*", liberty, constitutions, free trade, greater justice, creole supremacy—all vanished into thin air. But the reconquest proved conclusively even to certain timid souls that the old régime was bad and must give way to a new one. When it was over, it was O'Higgins and not Carrera who occupied the center of the stage.

FOOTNOTES

CHAPTER III.

1 Good commentaries on this period are found in: B. Vicuña Subercaseaux, *Crónicas del Centenario*, especially the chapters in the section devoted to *La Patria Vieja*; Bartolomé Mitre, *Historia de San Martín y de la Emancipación Sudamericana*, Biblioteca de "La Nación" Edition, Vol. I, Chapters VII and VIII. The works of Barros Arana, M. L. Amunátegui, Domingo Amunátegui Solar and L. Galdames are indispensable in this connection.

2 Manuel de Salas (1754-1841). All of the works mentioned have many references to him. There is a succinct biographical sketch in Figueroa, *Dicc. Biog.*, Vol. III, pp. 193-196. His parents were both descendants of noble families. Manuel de Salas was educated in Lima as a lawyer. He belonged to the *Regimiento de la Noblesa* as an *alférez* (ensign); he returned to Chile as a captain. He went to Spain where he met the king. In Chile he became a *regidor* of the *cabildo* and superintendent of public works under Ambrosio O'Higgins. He founded the Academia de San Luis and the first chairs of mathematics and drawing. In 1796 he wrote a *Memoria* regarding agricultural and industrial conditions. He participated in many governments, contributed to many journals and was an important factor in the social, political and economic regeneration of Chile.

3 See footnote 33 on page 54. Henríquez is quoted by Figueroa, *Dicc. Biog.*, Vol. II, p. 89, as saying: "The great instrument of universal education is in our (i. e. the Chilcans') hands—the press." He translated Bisset's work into Spanish under the title, *Bosquejo de la Democracia*. He died poor and unsung. Later, however, a monument was erected to him as the founder of the Chilean press.

4 Juan Martínez de Rozas (1759-1813). This leader and

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his personality, activity and contributions to Chile are discussed by all the writers referred to. The outline of his life is found in Figueroa, *Dicc. Biog.*, Vol. II, pp. 265-270. His ancestors, like those of Salas, were titled and some had occupied the highest administrative posts under the old régime. Martínez studied civil and canon law in the University of San Felipe and in Buenos Aires. He became a professor in the Colegio Carolino where "he departed from the text" in his teaching. He studied French also and political science. He became legal adviser to the intendant in Concepción and later to the captain general in Santiago. As the secretary to Carrasco in 1808 he found himself in a position to serve the interests of the patriots. See footnote 5 on page —, for his relation to the *Catecismo Político Cristiano*. He died in Mendoza, the city of his birth, broken-hearted at being ousted from further participation in the movements for independence which he so dearly loved.

5 José Miguel Carrera (1785-1821). In the *Col. de Hist. i Docs.*, Vols. I and XXII, are collected many documents of the *Diario Militar del General José Miguel de Carrera*. Some of his proclamations and references to him are found in *Sesiones de los Cuerpos Legislativos de la República de Chile 1811 a 1845*, Vol. I, pp. 65, 187, 197, 262, 276. Biographical data are also found in Amunátegui, *La Dictadura*, pp. 56-102 *et passim*. For the relations of Carrera to Poinsett see William Miller Collier and Guillermo Feliú Cruz, *La Primera Misión de los Estados Unidos de América en Chile*. There are some hitherto unpublished letters, documents and other material in this volume relating to Poinsett and Carrera. The activities of Carrera in the United States are treated rather fully too. The work is serviceable solely for its documents. See also Mitre, *op. cit.*, p. 336 *et seq.*

6 See footnote 37 on page 80.

7 For brief histories of political parties see Alberto Edwards, *Bosquejo Histórico de los Partidos Políticos Chilenos*; and José A. Alfonso, *Los Partidos Políticos de Chile*.

8 For the events in the revolution the author has relied primarily on Galdames, *Estudio de la Historia de Chile*.

9 July 4 is the date which the Latin Americans deliberately

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set for many of their revolutionary steps in order to make their own celebrations coincide with the date of the independence of the United States.

10 The list of deputies to the congress is given in *Sesiones*, Vol. I, pp. 30-31.

11 This *Reglamento de la Autoridad Ejecutiva acordado por el Congreso en 8 de Agosto de 1811* is found in *Sesiones*, Vol. I, pp. 49-50.

12 Galdames, p. 172. Unless otherwise stated all references to Galdames are to his *La Evolución*, etc.

13 Art. 1 of the *Reglamento*.

14 Many of the official documents issued in the earliest days of the revolution were "provisory", "temporary" or "transitory", denoting of course that the fate of Chile was still considered very uncertain, or that haste was absolutely necessary.

15 Arts. 2, 3, 4, 7.

16 Art. 7.

17 Art. 8.

18 Arts. 9, 10.

19 Art. 12.

20 Art. 15.

21 Art. 16.

22 Alcibiades Roldán, *Derecho Constitucional de Chile*, p. 75.

23 Galdames, (p. 174), refers to this as an "embryonic document of a nascent public law", deserving notice because it was revelatory of the "terrible juridic poverty of the epoch."

24 Roldán, *op. cit.*, p. 74. Roldán states that the congress purposely reserved to itself the appointive powers in order to maintain its position of superiority.

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25 September 4, 1811.

26 Carrera's *Manifiesto*, in which he explains why he dissolved the congress, is found in *Sesiones*, Vol. 1, pp. 197-199.

27 The word "people" must be read *cum grano salis*. There was no mass movement or popular opinion in those days.

28 Rozas in Concepción led a movement of resistance to Carrera. Civil war was imminent but a *modus vivendi* was arrived at. The unpaid troops of Concepción, however, overthrew Rozas and joined Carrera.

29 Collier and Feliú Cruz, *op. cit.*, pp. 15-21. Joel Roberts Poinsett was a Carolinian of French Huguenot antecedents. He studied in the United States and England and travelled in Europe and came to know many peoples, among them the Spaniards and Portuguese. Appointed by President Madison, a personal friend of his, he went to Chile and Buenos Aires as a confidential agent of the American government and lived in Chile from 1811 to 1814. He not only became a warm personal friend of José Miguel Carrera but seems to have identified himself with the Chilean revolution, serving in the army and advising in the political organization of the nation. Poinsett wrote one of the drafts referred to above and Juan Egaña the other.

30 *Ibid.*, p. 70.

31 *Ibid.*, pp. 71-86.

32 *Ibid.*, p. 75.

33 *Ibid.*, pp. 86-87.

34 *Ibid.*, p. 88.

35 Roldán, p. 75.

36 This question is discussed by Galdames, pp. 322-323. He believes that several persons contributed to its formulation and that there was no one author.

37 Carrera in his "Diario Militar", *Col. de Hist. i Docs.*, Vol. I, pp. 36, 37, 39, says: "We expected at any moment

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to see our *patria* the patrimony of that family". Carrera tells later of a conversation with Joaquín Larraín in which the latter is made to say: "We have all the presidencies in our *casa* (family); I am the president of the congress, my brother-in-law of the executive, my nephew of the *audiencia*; what more should we desire?"

38 The *Reglamento Constitucional Provisional Sancionado i Jurado en 27 de Octubre de 1812* is found in *Sesiones*, Vol. I, pp. 259-261.

39 "Corporation" was the term used to characterize various social, religious, economic and educational groups in their collective activities. The corporation of the university, for example, represented the faculty and students on state occasions, or in meetings of the *cabildo*, etc.

40 Art. 1.

41 Arts. 2, 3.

42 Art. 3.

43 Art. 4.

44 Art. 5.

45 Art. 6.

46 Arts. 7, 8.

47 Art. 8.

48 Art. 11.

49 Art. 13.

50 Art. 25.

51 Art. 26.

52 Art. 27.

53 The bill of rights is found in Arts. 18-23.

54 Art. 24.

55 Galdames, p. 327. According to Galdames, this consulta-

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tive, supervisory and juridical senate was the idea of José Manuel de Rozas. It was ironical that Carrera, a rival of Rozas, should borrow some of his constitutional ideas, as later on O'Higgins adopted some of Carrera's in his own constitution of 1818.

56 *Ibid.*, p. 325. This is the opinion of Galdames and of Roldán. Cf. the latter, p. 77. Amunátegui and Vicuña Mackenna, however, (*La Dictadura de O'Higgins*, p. 71), state that "this suppression (i. e. of the word "Roman") attributed to the consul (Joel Roberts Poinsett) had aroused all the religious scruples of the country against the government."

57 J. Arosemena, *Estudios Constitucionales*, Vol. I, p. 105.

58 Galdames, pp. 357-358. The members were Francisco Antonio Pérez, José María Rozas, Nicolás de Orjera and José Antonio Errázuriz. These men redacted the draft in less than twenty-four hours. Their signatures are appended to the document.

59 The *Reglamento para el Gobierno Provisional, Sancionado en 17 de Marzo de 1814* is found in *Sesiones*, Vol. I, pp. 335-336.

60 Art. 1.

61 Art. 2.

62 Art. 7.

63 Art. 8.

64 Arts. 9-10.

65 Art. 13.

66 The *Senado Consultivo* is treated in several short paragraphs appended after Art. 13.

67 Galdames, p. 360.

CHAPTER IV.

AUTOCRATIC CONSTITUTIONS AND NATIONAL MORALITY, 1818 - 1823

In the period 1818-1823 Chile had four constitutions or, more accurately, three constitutions and an inter-provincial convention. The personalities responsible for these documents were Bernardo O'Higgins, José Rodríguez Aldea and Juan Egaña, three vivid and alert individuals who had very pronounced ideas regarding the political needs of their country. O'Higgins was the liberator, Rodríguez Aldea was a sort of Talleyrand and Egaña was a moralist. They contrived to give Chile three documents which, though different in style, arrangement and language, produced the same type of governmental machinery, or would have if put into operation long enough. All three provided for autocratic governments; Egaña's, however, was tempered by ethical considerations which made it unique not only in Chile's constitutional history but in the realm of political science. Each one of the personalities mentioned will be discussed in connection with the specific document with which he was identified.

It is difficult to appraise the constitutional ideas of O'Higgins from the writings of his biographers and commentators.¹ Most of them are vehement in calling him first and foremost a republican. Basing an opinion solely on the two instruments which appeared during his rule of six years, it is possible to assert that since no king or hereditary offices were mentioned or created his

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constitutions were not monarchical. But neither were they democratic. They established legal dictatorships, which might be considered Latin-American forms of republican government and accordingly fall into a new classification of their own. O'Higgins by founding the Legion of Merit and abolishing the old titles of nobility did introduce a democratic element into Chile's political practice, which consisted in appointments on the basis of merit rather than of birth.² The constitutions themselves, however, and the way in which they came into existence illuminate O'Higgins' character and political ideas more than the statements about him by either his detractors or eulogizers. His constitutions reflect not only his own ideas but those of his friends who were able to influence his thoughts.

One of the characteristics on which writers on O'Higgins seem to agree is, that he was very much like wax in the hands of certain individuals who gained ascendancy over him. Especially in matters relating to the political organization of Chile is this extraneous influence most felt. O'Higgins nevertheless seems to have chosen as his advisers those whose political ideas coincided with his own. His letters, pronouncements, statements and administrative acts corroborate the fact that he believed in the type of government and constitution his counselors and assistants set up for him. Those who influenced his ideas and activities at various periods were Miranda in London; Juan Martínez de Rozas and Juan Mackenna during the period of the *Patria Vieja*; his first ministers, Villegas, Zañartú and Zenteno, from 1817 to 1820; and from 1820 to 1823 José Rodríguez Aldea, who was most responsible for the governmental organization of 1822.³

O'Higgins as a landed aristocrat became accustomed to rule his clientele and subordinates with an iron hand. He expected unquestioning response from his subordin-

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ates and got it. Eight years in the army, an army which he commanded as general-in-chief for over four, increased his habit of demanding perfect discipline, unstinted loyalty and absolute obedience from his subjects.⁴ As a military man he transferred to peace-time activities military technique, because he thought that this technique was consonant with the social and political conditions of his country and because, according to one of the commentators, he adopted the motto that the end justified the means.⁵

The rule of O'Higgins came into existence February 14, 1817, as a result of the action of an open meeting of the municipal council in Santiago. San Martín refused to accept the headship of government, giving as his excuse the fact that he was general-in-chief of the army and that his military plans would carry him too far afield. Two hundred and ten persons in Santiago attended the meeting in which Bernardo O'Higgins was chosen as Supreme Director with quasi-omnipotent powers.⁶ For six years he exercised a dictatorship at the behest of perhaps four thousandths of the total population of Chile.

Few facts can illustrate better than this the very peculiar origin of many Latin-American governments or explain the facility with which radical changes in government were effected. When only a mere handful of citizens was able to bring a government into existence—and in this case for six years—one appreciates the need of emphasizing personal action and discounting that of assemblies. Also, much of the political life is thereby made clear. It is possible to understand, for example, how the mere appointment of an unpopular cabinet officer might offend the *nation*, when only a few hundred represented the nation's will and could cause the downfall of a government.

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After the proclamation of independence, February 12, 1818, O'Higgins named a committee of seven to draw up a provisional plan of government which was to center all power in his own hands. This body,⁷ appointed on May 18, was instructed to draft merely a project. The project was definitely completed in August of the same year and was promulgated on October 23.

The sources of this document of 141 articles divided into titles and chapters were primarily the earlier constitutions of Chile, the French constitution of 1799, and the "Provisional Statute of the United Provinces of La Plata of 1815". There were borrowings from the constitutions of 1812 and 1814 and from Egaña's great project of 1811. Institutions such as the *residencia* were obviously transplanted from the old régime.⁸ O'Higgins not only imitated Napoleon I in the use of plebiscites to garner popular votes but he borrowed liberally from the constitution of 1799.⁹ An interesting paper establishing parallels between the constitution of 1818 and that of 1799 is Rodríguez Aldea's annotated copy of the former.¹⁰

None of the writers on the subject has noted the extraordinary similarity between the Chilean document of 1818 and the La Plata Statute of 1815.¹¹ O'Higgins was in the United Provinces from 1814 to 1817, during which period this document was framed and promulgated, and thus had the opportunity of following many of the political steps taken there. Nothing would be more natural than for him to borrow from France by way of the United Provinces. Especially considering the policy of its eastern neighbor towards Chile and the close friendship between O'Higgins and San Martín, it would be almost inconceivable that some of the former's political ideas should not be formed in the La Plata country.¹² In any case, many articles are identical in language, others strikingly similar, and in other instances certain institu-

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tions from that area were taken over more or less into the Chilean document. The La Plata *Junta de Observación* (Board of Observation), for example, became the Chilean senate.

In addition to the matter to be treated topically, the constitution contained a preamble¹³ explaining the method used for drafting it. O'Higgins stated that he desired to conform with the expectations of the people and to give them a government which should promote their happiness. The time was not, however, propitious for a congress, so he had appointed a committee of men known for their knowledge and patriotism. Some portions of the provinces were still subject to the royalists and the temper of others was such that a truly national representation in a congress was out of the question. A civil war might ensue. Therefore it was much better to formulate a provisional constitution which should be accepted or rejected by the general will. "Let it never be said of Chile," so reads the preamble "that at the time when the bases of its government were being formed its government exceeded the just limits of equity, its foundations were injustice..."¹⁴

O'Higgins went on to say that he disapproved of the method proposed by the committee for obtaining popular sanction and he proposed instead a plebiscite. Eight articles described how fathers or heads of families or those who possessed some capital or who exercised some profession might express their vote for or against the project in one of two books. The preamble also contained the names of those O'Higgins had appointed to the senate if a majority voted in favor of its adoption. As a matter of fact, none voted against it.¹⁵ Acceptance of the constitutional project meant acceptance too of a senate already chosen. The senators included several of

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the drafters of the project and some of the wealthiest and most powerful of the creole aristocracy.¹⁶

The mechanism of government was simple. A Supreme Director was to be the executive¹⁷ and a conservative senate was to act temporarily as a legislative power.¹⁸ Justice was to be administered by a supreme judicial tribunal, a chamber of appeals, and justices of the peace in first instance. The old Spanish tribunals of appeals, mining and commerce¹⁹ were retained. The Supreme Director was to be assisted by three secretaries of state, treasury and war, respectively.²⁰ The three provinces of Santiago, Coquimbo and Concepción were to be administered by governor-intendants and their lieutenant-governors, with a secretary and counsellor.²¹ Valparaíso, Talcahuano and Valdivia were to be ruled by military governors.²² Villages and towns were to have their own councils.²³

The Supreme Director should appoint the judges of the supreme judicial tribunal, the magistrates of the chamber of appeals,²⁴ the three secretaries of the cabinet and the members of the senate.²⁵ He was also to choose the secretaries and counsellors of the governor-intendants and of the municipal councils. The last named, as well as the governor-intendants and lieutenant-governors were to be elected under a regulation to be formulated by the senate.²⁶ Since the Supreme Director was already in office, the constitution merely provided that in the future he be elected by the free consent of the people, expressed according to a law to be issued by the legislative power.²⁷

The above paragraph gives a rough idea of who governed the state from 1818 to 1822. The limitations²⁸ on the executive were not binding at all, partly as a result of his omnipotent appointive powers and partly because every limitation carried with it a clause declaring that

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under certain circumstances the limitations were inoperative.

The senate was similar to those created in 1812 and 1814. The manner of its election and its functions did not make it an effective check on the Supreme Director. Representing, however, the influential creoles, it served as a measure of restraint. This degree of influence would have been exercised, whether there had been a constitution and a senate or not. The municipal council of Santiago was probably as great a counterpoise to the Supreme Director's activities as any force provided for in the constitution.

The judiciary was better organized than at any previous time. The Supreme Director was enjoined from interfering in judicial matters.²⁹ But even this provision was rendered ineffective by his right to appoint the justices and because every sentence of the supreme judicial tribunal must be signed by that personage himself.³⁰

All the higher magistrates and officials were given titles as a body and individually. Their honors were prescribed. In general, the terms of all were during good behavior. A final paragraph prescribed the oath to support the constitution which all must take.

Some of the matter usually found in fundamental laws is not discoverable in this constitution. Its purpose and provisional character make clear the main omissions. Certain inexperience in the writing of constitutions might explain others. The absence of definitions of nationality and citizenship will be referred to below.

Instead of creating a government, the constitution of 1818 was the legitimization of a régime that had already been in existence for over a year,³¹ and, according to one commentator, it altered in no way the *status quo*.³² It sanctioned a dictatorship and granted omnipotent powers to O'Higgins in a manner which he himself very

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largely outlined, his direct and indirect influence on the drafting committee being, probably, the most powerful of all.³³

After three years the dictatorship of O'Higgins and the undisguisedly autocratic constitution which supported it ran into the rough rocks of opposition. There were many causes for dissatisfaction, some real, some alleged. But the pressure brought to bear on the Supreme Director was so strong and insistent that he determined to satisfy at least one element of discontent by issuing a new constitution. Deep down in his heart and supported by his minister, Rodríguez Aldea, he continued to believe—and sincerely—that a dictatorship was still the prime need of a Chile not yet ready for democracy. Though O'Higgins may have been a republican, his philosophy of government was pragmatism rather than theoretical.³⁴ If the frankness of the constitution of 1818 and the absence of a popularly elected legislative body gave offense, let the semblance be remedied but not the reality. He knew that his own cleverness and that of Rodríguez Aldea could turn out a constitution satisfactory enough to political ideologists without altering the machinery then functioning.³⁵

One of O'Higgins' difficulties had been friction with the senate. He dissolved it and called for a "preparatory convention". This body was elected and opened under the auspices of Rodríguez.³⁶ From 1820 on, when he had been appointed secretary of the treasury, that individual had exerted not only great influence in the government but on the Supreme Director himself. So it came about that in the preparation of a new code he loomed up as the most important figure. His machinations and those of O'Higgins brought into being a tractable assemblage. It was not elected popularly because the government itself had indicated in many cases who

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should be elected,³⁷ and O'Higgins disinterred the old excuse that this was the only "respectable popular assembly which legally could be convened for the time being."³⁸ The preparatory convention, at all events, met in Santiago July 23, 1822. There were thirty members, among them Camilo Henríquez, recently returned from the La Plata country where monarchist talk had had some effect in altering his attitude and that of other Chileans in regard to the ideal form of government for Latin America. The preparatory convention transformed itself into a legislative, then into a constituent, assembly. Three weeks before it was scheduled to close it was goaded into drafting a constitution for the state.³⁹

Rodríguez Aldea with scissors, paste, and much ingenuity and cunning had already prepared a constitutional project. He had transmuted the Spanish liberal monarchical constitution of 1812 into an autocratic semi-republican constitution with many provisions taken *verbatim* from the constitution of 1818. As though by magic he pulled this out of his sleeve, presented it to the convention and on October 23, 1822, after short debates very casually mentioned in the minutes it was accepted and was promulgated on the thirtieth. But in January, 1823, the constitution of 1822 lapsed, its author, Rodríguez Aldea, fell from power and its patron, the Supreme Director, Bernardo O'Higgins, was sent *más afuera* (exiled).⁴⁰

On the face of it, therefore, this document of an existence so brief—three months—should deserve very little emphasis; but as has been said elsewhere, in many cases projects and short-lived constitutions exerted significant influence upon the development of subsequent public law. Every instrument of the sort, therefore, becomes clothed with the importance of being an indispensable chapter in the constitutional development of Chile.

The code of 1822 with its 248 articles was really the

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first which deserved the name "constitution". In appearance and completeness and in the machinery it set up no previous document was comparable to it. It has been called the most perfect document drafted in Chile with the exception of the constitution of 1833.⁴¹ As many of its provisions will be studied in the topical analysis below, because many others will appear in slightly modified forms in the constitutions of 1823, 1826, 1828 and 1833, and because its purpose and effect were identical with those of the constitution of 1818, only an examination of its idiocratic elements will be made at this point.

The constitution initiated the custom in Chile of numbering all the articles consecutively instead of anew with every title, as in 1818. Its ten titles covered all the subjects usually defined and described in a document of the kind.⁴² A very interesting study in parallel columns of all the articles directly borrowed or adapted from the Spanish constitution of 1812 has already been referred to.⁴³ There were certain modifications which were essential in adapting the Spanish constitution to O'Higgins' own needs and ideas and these will be noted. A manifesto issued to the people by the government stated that the framers of the document had before them "the best models, principally those of the classical nation of liberty, the United States," and decided that it was best to adapt them to the needs of the country.⁴⁴

The constitution of 1822 erected a government with all the appearances of being "representative and composed of three independent powers".⁴⁵ There was to be a Supreme Director with three minister-secretaries. In case of the death of the former a peculiar procedure was indicated for the establishment of a regency until a new executive could be elected.⁴⁶ The congress was to be bicameral; a special type of senate and a chamber of deputies were to possess the legislative power. A court of represen-

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tatives, however, should act in their stead during the long periods between sessions of the congress, which met once every two years.⁴⁷ Justice was administered by courts similar to those created in 1818 but a tribunal of conciliation⁴⁸ located in the capital was added. Its function was to adjust where possible the differences between parties before the cases reached the regular courts. Local government suffered some alterations. The intendancies were abolished and departments were created instead. These were to be governed by directorial delegates appointed by the Supreme Director with the approval of the congress.⁴⁹ These officials in turn named the district judges, wardens (*celadores*), inspectors and selectmen (*alcaldes de barrio*).⁵⁰ The first one and the last two of these made up the lists of citizens eligible for electors, from which lists one person was chosen by lot for every thousand souls. These then elected the deputies.⁵¹

In tearing away the outer dress which made this constitution seem democratic and representative, the composition of the senate first deserves examination. That body was to be composed of the members of the court of representatives elected by the chamber of deputies, the ex-Supreme Directors, the ministers of state, the bishops with jurisdictions within the territory, a magistrate of the supreme court of appeals named by that tribunal itself, three army officers appointed by the executive, the directorial delegate of the place where the congress met, a doctor of each university chosen by the faculty, and two business men and two agriculturists who possessed a capital of at least 30,000 pesos, named by the chamber of deputies.⁵²

In the next place the court of representatives should be described, so that the calculated cunning of Rodríguez and O'Higgins can be appreciated. This court was to be made up of seven members elected by the chamber of

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deputies and the ex-Supreme Directors. Of the elected seven, four should be members of the chamber. The court would only be renewed when a new executive came into power, and it would continue in existence if he were reelected. When the congress opened, the court⁵³ became the senate (*tomará la corte permanente el carácter de Senado*) and was joined by the others named in the preceding paragraph who were also to be in it. After the sessions of the senate closed, the functions of the court of representatives were to see that the constitution and laws were obeyed, to convoke extraordinary sessions of congress, to qualify the elections of the deputies, and to exercise all the attributes of the legislative power (of course during the recesses of the congress). None of its decrees, however, became a law until the congress had approved it. Its collective title was Supreme Excellency, and supreme it was.⁵⁴

Behind all this apparatus and show stood the simple fact that the Supreme Director was still an all-powerful dictator. His omnipotence arose from two constitutional devices, one rather subtle and almost undetectable and the other not so well disguised. The first was the machinery for the election of the deputies. The lists of those qualified to be electors were drawn up by the three local officials already mentioned who were to be chosen by the directorial delegates who in turn were appointed by the Supreme Director. In this manner autocratic control over the elections was assured. As these two provisions appeared at opposite extremes of the document, they were not immediately discernible to a casual reader. And if undesirables by any chance should get through this drag-net, the court of representatives with its power to qualify the elections of deputies could exclude them. So, as a result of the electoral system the chamber of

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deputies was not a representative body and could easily become a pawn of the autocrat.⁵⁵

But the "wooden horse of Troy"⁵⁶ was the court of representatives. In 1822 its members were chosen⁵⁷ by the preparatory convention itself, so that O'Higgins would not need a special effort to have seven friends tried and true as his collaborators in that body. But even in the future the device described in the preceding paragraph made it possible for him to control the membership of the permanent legislative body. With congress meeting for short periods every two years, the court of representatives and the Supreme Director were omnipotent. But when the congress did assemble it could hardly be more than the servant of the executive since it would have to sanction all the acts passed by the court and the Supreme Director during its long hibernation.

What may be regarded as monarchistic germs⁵⁸ were discoverable in the articles declaring the person of the Supreme Director inviolable⁵⁹ and that he needed the permission of congress or that of the court of representatives to marry, to act as a godfather and to make visits in his official capacity.⁶⁰ The constitution also contained the celebrated extraordinary-power clause so common in all the early constitutions of Latin America. When emergent measures were necessary to stave off any peril threatening the state, the legislative power could grant extraordinary powers to the Supreme Director while the danger lasted or he could assume it, if the legislative power were in recess, and make a report when it next met.⁶¹ This meant virtually a temporary suspension of the constitution.

There seems to be no doubt that this constitution caused the downfall of O'Higgins.⁶² Many saw in it merely a scheme whereby he could maintain himself in power for ten years more; and what was worse to many,

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the continuation of Rodríguez Aldea's "sinister" influence.⁶³

Whatever the reasons for desiring the fall of O'Higgins, a revolution led by Ramón Freire in Concepción spread to practically the whole country.⁶⁴ Again an open session of the municipal council in Santiago was convened and it demanded and obtained the abdication of O'Higgins. A board of government was created to govern temporarily;⁶⁵ but Freire hearing of this rushed to Santiago and refused to recognize a body that did not represent the three provinces. He did accept from its hands, however, the appointment as Supreme Director.

Freire agreed to allow a plenipotentiary from each of the three provinces to evolve a *modus vivendi* until a general congress could be convened. Elections for the three representatives were hurriedly held. Juan Egaña sat for Santiago.⁶⁶ The three representatives within twenty-four hours had elaborated and signed an "Act of Union of the Provinces".⁶⁷ This was a provisional device to keep the country together and articulated until a permanent constitution might be formed. Freire was chosen Supreme Director *pro tem*. Many of the provisions of 1818 were made applicable to the Supreme Director and a "conservative senate". Three senators were to represent each of the provinces. As a reaction against the despotism of 1822,⁶⁸ ministerial responsibility was introduced. The senate saw to the behavior of the ministers and to the preservation of all individual guarantees. The country was divided into six departments governed by agents appointed by the Supreme Director. There was a slight hint of federalization in this provisional document.

Freire knew his limitations and called to his side Mariano Egaña, the worthy son of his father, as his first minister. Mariano believed very much as his father did.

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He was a traditionalist and conservative and yet in some respects modern and revolutionary. José Miguel Infante, the liberal federalist, happened to be a member of the senate. Therefore there was bound to be friction between the senate and the executive; but in spite of vexatious problems an electoral law was elaborated and elections were held.

The elections for a constituent assembly occurred without incident, except in the capital where a group backing the policy of the Supreme Director was chosen. None of the radicals was elected, and this meant that the constituent assembly would be primarily moderate. Manuel de Salas, Juan Egaña and Alejo Eyzaguirre represented the capital. With the father in the constituent assembly and the son as first minister many feared that the Egañas would exercise too paramount an influence. Freire recognized Mariano's ability too well to oust him, as was requested by some, and appointed a pronounced liberal as secretary of the treasury to equalize the balance.

Having concluded its functions the senate resigned. On August 12, 1823, the congress met in Santiago. Freire resigned, as was customary, to return to his army but, also as customary, his resignation was not accepted. Juan Egaña presided over this assembly which named eleven committees to study certain matters and make recommendations. On the constitutional committee were Juan Egaña, José Gregorio Argomedo, Agustín Vial, Diego Antonio Elizondo and Santiago Echevers.⁶⁹ Though the membership changed from time to time, Juan Egaña's influence was paramount throughout.⁷⁰

The congress was mainly composed of representatives of the affluent aristocracy of Chile who desired quiet and stability with a government under their control. The small minority of course opposed such a program. They preferred a liberal document penned by Pedro Arce.⁷¹

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After a limited debate, forty-eight of the members of the congress approved Egaña's document and four—among them, Manuel de Salas and Camilo Henríquez—voted against it. Egaña and his friends thought that a wiser or more complete code had never been elaborated and a marble statue was talked of to commemorate this stupendous achievement.⁷² Faith in Egaña and the conservative character of the assembly, rather than common sense, explain the general acceptance of his rather utopian fundamental law.⁷³

The sources of this document were discoverable primarily in Egaña's fertile,⁷⁴ imaginative and philosophic mind. Echoes of the old régime and elements from earlier Chilean, French and American constitutions also appeared in it. But in the main the constitution of 1823 was based on the project which Egaña wrought in 1811 and published in 1813. This document influenced all the subsequent constitutions up to 1823, as the constitution of 1823 was to mold in some ways all which appeared after it.

Egaña wrote much more than constitutions, and from his writings⁷⁵ one discovers the writers and philosophers who inspired him. He refers constantly to Plato, Aristotle, Sir Thomas More, Beccaria, Filangieri, Roederer, Montesquieu, Rousseau, Paine, Adam Smith, Price and David Hume. He mentions Greece, Rome, Poland, China, Turkey⁷⁶ and other parts of the world. It is evident that he spent much time in trying to evolve a practical political philosophy and a modern system of economics. All his learning he dedicated to his country, and the constitutions were the best expressions of his eclectic philosophy. Though he made a gigantic attempt to be practical, the philosopher bested the politician. Egaña failed because he was Egaña and because Chile was Chile.

Egaña's fundamental beliefs as expressed in the con-

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stitutions of 1811 and 1823 may be briefly stated. Administration should be highly centralized and the executive and legislative powers should not be separated. The executive should have autocratic authority and the government in general should be exercised by a bureaucratic oligarchy. He believed that the rich and the well-born were the only ones capable of giving Chile a decent and enlightened government, but that the masses should be lifted to a level where they eventually too should be prosperous and cultured. Above all was his firm conviction that morals, religion and politics⁷⁷ were one, and that ethical considerations were as much a statesman's concern as any political or economic problem.

Egaña would have gloried in prohibition, governmental promotion of business, farm boards, interstate commerce commissions, civil service, blue laws, state control of water power, telegraph and railroads, political conventions to choose candidates, senatorial investigations, government by committees, etc. Modern governmental processes would have suited him perfectly, and he tried to create a government which should provide many of the elements just enumerated.

The life of his document was extremely short, but as it is one of the most original and curious of its kind written in America during the period 1810-1835 it deserves special consideration. The reception given it demonstrated that it reflected the ideas of many creoles. Thus it achieves the historical importance of bringing out at least another phase of the creole mind.

The constitution of 1823 in accordance with the ideas of Egaña created a government whose executive was to be omnipotent like the Supreme Director of the two constitutions of O'Higgins. This executive, however, was surrounded by a number of unfamiliar and original political creations. But unlike O'Higgins' power, his

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omnipotence did not arise from schemes similar to those in the constitutions of 1818 and 1822.

In addition to three ministers,⁷⁸ the constitution provided for a council of state⁷⁹—a new organization in Chile's constitutional history. There was to be a conservative senate with a more conventional composition albeit with some peculiar functions. On the other hand, the second house, the national chamber, was *sui generis* in personnel and powers. Electoral assemblies were supposed to be the voice of the people in the qualification and impeachment (*censura*) of public functionaries.

The judicial system⁸⁰ also was rather remarkable and lived long after the other institutions created by this curious code had ceased to exist.⁸¹ The familiar courts of 1818 and 1822 reappeared. Technical judges or experts were provided in addition for all cases where mere knowledge of the law would not suffice to determine the legal rightness or wrongness of a case.⁸² Egaña created too a new "direction of national economy" with special functions, and devoted a separate chapter to the public treasury.

For purposes of local government⁸³ he divided and subdivided the country into ever smaller and smaller units. Beginning with ten homes as the smallest, he organized the nation into *comunidades*, *inspecciones*, *prefecturas*, *subdelegaciones* and *departamentos*⁸⁴ or provinces: Egaña used the latter terms interchangeably. In the larger of the last three divisions there would be *municipalidades* or municipal governments.

The electoral system⁸⁵ was a typical product of Egaña's mind. He desired that all citizens have a voice in government by participating in the election and *censura*⁸⁶ (impeachment) of public officials. Therefore he created electoral assemblies which were to be provincial or national according to the officers they were to elect or re-

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move. The system was complex and the description thereof very confused. One gathers, however, that by lot and election the assemblies must be kept down to four hundred. Evidently this number was reduced by half, also by lot, before an election or impeachment could take place.⁸⁷ Those then empowered to vote were restricted merely to a choice of individuals whose fitness (*idoneidad*) had been previously determined by "constitutional magistrates."⁸⁸

The national electoral assemblies should elect or impeach the Supreme Director, the senators, the justices of the supreme court, officers from colonel upward, fiscal inspectors, the directors of economy, the attorney-general, consultants of the national chamber, and, for the present, the justices of the court of appeals.⁸⁹ The departmental councillors, however, were chosen by the delegations directly and without previous qualifications by the "supreme magistrates".⁹⁰ But in last analysis the Supreme Director it was who chose the governors and delegates,⁹¹ supervised elections and determined qualifications.⁹² In addition to the elections and impeachments mentioned above, the electoral assemblies were to vote on all those proposed for distinction as "well-deserving in heroic degree" (*beneméritos en grado heroico*).⁹³

The provincial electoral assemblies formed in the same manner as above described elected and removed the justices of the courts of appeals of the provinces.⁹⁴ They had the sole right to remove governors, intendants, justices of the peace,⁹⁵ and the right also to nominate archbishops and bishops.⁹⁶ The national electoral assemblies on their part, had likewise the sole right to remove the ministers of the cabinet, the councillors of state and the members of the tribunal for liberty of the press.⁹⁷

The qualification of persons eligible for high offices

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was determined by the Supreme Director, the senate and the departmental councillors, who verified the fitness of from one to three persons for each vacancy.⁹⁸ None could be proposed for the important offices who had not achieved "civic merit".⁹⁹ This was obtained by having fulfilled one of twenty-two conditions described in the constitution. All were some form of particular service to the country. Some of them were: teaching; unsalaried public service; the betterment of a rural estate; the legitimate fatherhood of more than six children; the study of medicine; assistance to beggars, paupers, lame and halt; the betterment of morals and religion; free service in improving roads, hospitals, asylums and public buildings; etc.¹⁰⁰

The lawmaking procedure illustrates another marked peculiarity of this document. At some time or another four factors participated in the process of turning a bill into a law. One, the Council of State, has been referred to above. Another was the senate,¹⁰¹ composed of nine wealthy citizens, whose main functions were supervisory, censorial, consultative and legislative. The senators were elected for six years and were indefinitely reeligible.

Another was the national chamber,¹⁰² composed of at least fifty, but never more than two hundred, national consultants who must reside where the senate and Supreme Director resided. They were elected for eight years, one-eighth being renewed every year. Aside from their part in the making of laws, their functions were to approve or disapprove the declaration of a defensive war, taxation and loans, and the proposals for recipients of the degrees of *beneméritos comunes* and *en grado heroico*. They also named the members of the tribunal for the liberty of the press.¹⁰³ Four clauses specified that the

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national chamber would cease constitutionally to exist if it met without proper authorization or transformed itself into a permanent body or in any way exceeded or abused its legitimate powers.

The last and most important factor was the Supreme Director,¹⁰⁴ elected for four years—reeligious once, who must wear the uniform of that official but no other civil or military insignia. His general powers were similar to those of the executive of 1822, and were more or less the normal attributes of an executive with the customary Latin-American extraordinary-power clause.¹⁰⁵ But in the making of laws his function was unique. He had the exclusive right to initiate laws, excepting when that right belonged to the senate,¹⁰⁶ which might exercise it only twice a year, during fifteen days immediately succeeding the completion of the senatorial visits¹⁰⁷ and a second period six months after the first. When the senate initiated laws the Supreme Director assumed the rôle the senate usually played when he had the initiative.

The usual route of a bill¹⁰⁸ was for it to go from the Supreme Director to the council of state and from the latter to the senate. With the exception of certain measures, a bill became a law if the senate approved it. If the senate disapproved it and returned it twice to the Supreme Director, this constituted a veto. A deadlock between the Supreme Director and the senate *ipso facto* necessitated a call for a meeting of the national consulters. And with the exception of sessions to sanction money bills and loans, the national consulters never met except to decide a deadlock between the executive and the senate. If the chamber approved the bill the senate must yield; if not, the bill was killed and was considered as not having been proposed.

Paraphrasing a statement of a Chilean commentator, the elections were *operas bouffes* prepared by the gov-

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ernment itself. The authority of the Supreme Director would be supreme because of his appointive and lawmaking powers and because of the inefficacy of the senate and national chamber as checks. Even if these bodies were given effectual powers, they and the Supreme Director would act cheek by jowl, as they belonged to the old creole aristocracy, the members of which alone could fill all the qualifications for serving in public office. Traditions and common needs would hold them together.¹⁰⁹

The chapter on national morality¹¹⁰ contained perhaps more than any other part of the document the fundamental ideas of Juan Egaña. A moral code was to be made by the state which should detail the duties of the citizen in all stages of his life and in all states of his social life. It should prescribe habits, exercises, duties, public activities, rites and pleasures "which would transform laws into customs and customs into civic and moral virtues".¹¹¹ The virtues were then defined and enumerated. Their general tenor was: the dutiful, conscientious, loyal and persistent performance of all acts in the private and public life of citizens and of their governors. Heroic deeds and sacrifices were especially commendable. The development of a reputation for an exemplary life, the distinguished discharge of duties and unselfish deeds constituted other noteworthy virtues.

A *monte pio* or gratuity fund was to be established to care for indigent *beneméritos* or their widows or children,¹¹² and provide scholarships for others.¹¹³ Beside the distinctions already mentioned other rewards were to stimulate individuals to greater activity in serving the state and in making themselves citizens worthy of it. Four great civic holidays were to be established with great pomp and ceremony when those virtues were to be extolled and the deserving signalized. Each holiday was

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dedicated to a different object: national prosperity; filial love; agriculture and arts; memorials of great national heroes.¹¹⁴ A *Mercurio Cívico*, published quarterly by the senate, would be devoted to the questions of national morality, citizenship, merits and rewards.¹¹⁵

In trenchant statements a Chilean author sums up Egaña the man and Egaña the statesman: "Rarely have a man and a book been able to represent more faithfully the vacillating philosophy of a period of transition; revolutionary in aspirations and reactionary in spirit were the times when Egaña lived." He was "an 'anachoric' scholar, a jurist of a school already dead, religious, intolerant, dogmatic, but a thoroughly honest man".¹¹⁶

In less than half a year the constitution of 1823, much to the sorrow and anguish of Egaña, was sent to join those of 1818 and 1822. The complex machinery it set up required at least 20,000¹¹⁷ or more experienced functionaries who could not be found in all Chile. Freire was suspicious of it; and many felt that its aristocratic and monarchistic tendencies would bring great evils to the nation. Weight was given to this suspicion of monarchism by Mariano Egaña's proposal that, if the independence of Chile could only be maintained by the establishment of a monarchy,¹¹⁸ he be empowered to find a prince or king while he was in Europe on a mission to London to bolster up Chile's credit and her reputation abroad.

In addition to the fears of monarchism, there came a realization that the document was entirely unsuited to its time, and with this realization a desire that it be allowed to lapse into "innocuous desuetude" or else be replaced by another. Ramón Freire voiced his suspicions in his message to the congress. Among other things, he said that though it contained very brilliant and inspired ideas it could not stand up against a public

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opinion which opposed it. One reason for demanding its suspension was the impossibility of putting it into practice, because, perhaps, it was too perfect. This was one of the pretexts used to justify movements that ushered in a stormy period of political upheaval. Egaña's masterpiece became one of the constitutions written for history.

FOOTNOTES

CHAPTER IV.

1 Bernardo O'Higgins was born in 1778 to Ambrosio O'Higgins and Isabel Riquelme. He was an illegitimate child. His father, captain-general of Chile and later viceroy of Peru, was born in Ireland. Bernardo O'Higgins was educated in Lima and in England. While in England he met Miranda and became a loyal member of the *Logia Lautaro* which he introduced into Chile. Though somewhat arbitrary at times, he was a sincere and honest patriot, soldier, governor and man. He probably gave as much thought to the peace-time problems of Chile as he did to its emancipation. As Supreme Director from 1818 to 1823 he introduced many lasting reforms and deserves a prominent place in the constitutional, military and civil history of nascent Chile. He died in Peru in 1842. For the constitutional aspects of O'Higgins' Directorship see Orrego Vicuña, "El Espíritu Constitucional de la Administración O'Higgins", *Revista Chilena de Historia y Geografía*, Vol. XLII, No. 46, 1922, pp. 296-319; Vol. XLIV, No. 48, 1922, pp. 120-163; Vol. XLV, No. 49, 1923, pp. 242-276; Vol. XLVI, No. 50, 1923, pp. 297-369; Vol. XLVIII, No. 52 (though the number on the outside cover is 47), pp. 5-77. Also M. L. Amunátegui y B. Vicuña Mackenna, *La Dictadura de O'Higgins*. According to the preface, the purpose of the authors was to relate O'Higgins' vain efforts to establish a dictatorship and to prove the impossibility of such a system getting roots in America. Also the *Epistolario de D. Bernardo O'Higgins*, annotated by Ernesto de la Cruz, Madrid, 1920 edition, two volumes in one. The works of Barros Arana, Galdames, Figueroa, Mitre and others abound in references to O'Higgins.

2 M. L. Amunátegui, *La Dictadura*, pp. 135-139.

3 *Ibid.*, pp. 255-258, 316-317; Galdames, pp. 532 *et seq.*;

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Orrego Vicuña, *op. cit.*, No. 46, pp. 312, 317; No. 52, pp. 32-33; *Epistolario*, Vol. I, pp. 26, 29; Vol. II, p. 184. In a letter to Ramón Freire (*Ibid.*, Vol. II, p. 191), O'Higgins denied categorically that any of his acts were influenced by his ministers or by any one else. His very denial, however, gives substance to the complaints against him.

4 Amunátegui, *La Dictadura*, pp. 37-38.

5 *Ibid.*, p. 123.

6 *Ibid.*, pp. 118-119. These authors admit, however, that in the circumstances it would have been impossible to consult a large number of citizens.

7 Galdames, p. 485. The members of the committee were Manuel de Salas, Francisco Antonio Pérez, Joaquín Gandarillas, José Ignacio Cienfuegos, José María Villareal, José María Rozas and Lorenzo José Villalón. See also Amunátegui, *La Dictadura*, p. 219; *Sesiones*, Vol. II, pp. 5, 7; Orrego Vicuña, *op. cit.*, Vol. 48, p. 126.

8 Galdames, pp. 502-503.

9 Amunátegui, *La Dictadura*, p. 227.

10 Orrego Vicuña, *op. cit.*, No. 52, pp. 69-70. Besides the concordance between certain articles in the two documents, Rodríguez' comments reveal some of the authors he had consulted in preparing the constitution of 1822 and in analysing the document of 1818. He refers to Mably, Diderot and Grimand. See Galdames, pp. 503-504.

11 Luis V. Varela, *Historia Constitucional de la República Argentina*, Vol. 4, pp. 224-254, *Estatuto provisional para la dirección y administración del Estado...* Buenos Aires 5 de Mayo de 1815.

12 In spite of the friendship between San Martín and O'Higgins, O'Higgins never followed San Martín's advice regarding the establishment of a monarchy.

13 The constitution of 1818 is found in Anguita, *Leyes*, Vol. I, pp. 51-59; also in *Sesiones de los Cuerpos Legislativos*, Vol. II, pp. 7-19. On p. 7 there appears a manifesto dated May 18, 1818, explaining the delay in the preparation

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of a constitution and giving the names of the committeemen chosen to draft it. The constitution is discussed by Orrego Vicuña, *op. cit.*, No. 48. For the preamble see Anguita, pp. 51-52. Certain matters are treated topically in Chapter VI of the present volume.

14 Anguita, *Leyes*, Vol. I, pp. 51-52.

15 Galdames, p. 487; Orrego Vicuña, *op. cit.*, No. 48, p. 130. Orrego Vicuña quotes Barros Arana as saying that there were not two dozen persons in the whole country able to discern between the extension and limitation of the attributes of the high offices of the state. This by way of a commentary on O'Higgins' "plebiscite".

16 Galdames, p. 489. Three senators also members of the drafting committee were José Ignacio Cienfuegos, governor of the bishopric of Santiago; Francisco Antonio Pérez, dean of the tribunal of appeals; and José María Rozas. Alternates appointed were also very distinguished members of the Chilean aristocracy.

17 Const. of 1818: *Del Poder Ejecutivo*, Tit. IV, Chap. I. Whenever the text treats of a single constitution, the words "constitution of" will be omitted in the footnotes.

18 *De la Potestad Legislativa*, Tit. III, Chaps. I, II and III.

19 *De la Autoridad Judicial*, Tit. V, Chapt. I, II and III.

20 *De los Departamentos o Secretarías del Poder Ejecutivo*, Tit. IV, Chap. III.

21 *De los Gobernadores de Provincias i sus Tenientes*, Tit. IV, Chap. IV.

22 *De la Elección de los Subalternos del Poder Ejecutivo*, Tit. IV, Chap. V.

23 *Ibid.*

24 Tit. V, Chap. II, Art. 3; Chap. III, Art. 7.

25 Tit. IV, Chap. I, Art. 10; Chap. II, Art. 1.

26 See footnote 22, page 109.

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- 27 Tit. IV, Chap. I, Arts. 1-2.
- 28 Tit. IV, Chap. II. *Límites del Poder Ejecutivo.*
- 29 Tit. IV, Chap. II, Art. 1.
- 30 Tit. V, Chap. II, Arts. 3, 12.
- 31 Galdames, p. 502; Amunátegui, *La Dictadura*, p. 224; Jorge Huneeus, *Obras de: La Constitución ante el Congreso*, Tomo I, p. 50.
- 32 Huneeus, *loc. cit.*
- 33 Galdames, pp. 500-501; Amunátegui, *La Dictadura*, p. 221; Orrego Vicuña, *op. cit.*, No. 52, p. 60; No. 48, p. 145.
- 34 Galdames, p. 516.
- 35 Orrego Vicuña, *op. cit.*, No. 52, p. 37. This author said of the artifice: "The wife of Caesar should not only be sinless but appear so too." Constitutional "appearances" counted for much.
- 36 Galdames, pp. 531-532; Orrego Vicuña, *op. cit.*, No. 50, pp. 319-369; No. 52, pp. 5-31. These pages treat particularly of the constitution of 1822. Vol. VI of the *Sesiones* is devoted to the *Convención Preparatoria* and the *Corte de Representantes*, 1822-1823.
- 37 *Sesiones*, Vol. VI, pp. 9-23. There appear in these pages affidavits of many officials stating that they had received orders to see that certain designated persons were elected to the *Convención Preparatoria*. O'Higgins' defense appears in the *Epistolario*, Vol. II, p. 198, in a letter to Ramón Freire dated January 14, 1823. He says that he did intervene because "I wanted good men, quiet and apart from all parties". He said further that that was common practice everywhere—even popes intervened in elections, p. 199. This excuse does not agree with the one given in the preceding note. The former was a personal explanation, the latter a public one.
- 38 Galdames, p. 534.
- 39 Amunátegui, *La Dictadura*, p. 338.

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40 *Más afuera* literally means "farther out" and is the current expression in Chile used to designate political exile. O'Higgins went to Perú. He never returned to the territory of the nation he, in no small measure, had brought into being.

41 Orrego Vicuña, *op. cit.*, No. 52, p. 67. This constitution appears in Anguita, *Leyes*, Vol. I, pp. 102-113; and in *Sesiones*, Vol. VI, pp. 332-344. See *Sesiones*, Vol. VI, pp. 263, 273, 276, 278, 280, 318, 320 and 325, for debates on various articles.

42 All matter is discussed under the following titles (and numbers): I. The Chilean Nation and Chileans. II. The Religion of the State; III. The Government and the Citizens; IV. The Congress—its formation; qualifications of electors and deputies; attributes; lawmaking; court of representatives; V. The Executive Power—election and term; attributes and limitations; ministers of state; VI. Internal Government—higher judges; municipal councils; VII. Judicial Power—tribunals of justice; chamber of appeals; justices of peace; administration of justice and individual guarantees; VIII. Public Education. IX. The Military Forces; X. The Observance and Publication of the Constitution.

43 Orrego Vicuña, *op. cit.*, No. 52, pp. 10-31.

44 "La Convención a los Habitantes de Chile" in *Sesiones*, Vol. VI, pp. 343-344.

45 Art. 12.

46 Art. 86. A box with three keys contained a paper on which the Supreme Director put the names of those who should act as regents. If he felt death approaching he called the other two holders of keys—he himself kept one—and the names were read. The sealing and opening of the box and the placing therein of the ballot was an important obligatory ritual on certain holidays. The constitution did not explain how the Supreme Director was to know or recognize the symptoms of approaching death.

47 Art. 17.

48 Art. 190.

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49 Art. 144.

50 Art. 153.

51 Arts. 22, 25, 29.

52 Art. 18.

53 Apparently, then, four deputies also sat or could sit in the senate when congress convened.

54 Arts. 61-79.

55 Orrego Vicuña, *op. cit.*, No. 50, p. 363.

56 According to Galdames, p. 552. He imputes the invention of this scheme to Rodríguez Aldea. Galdames believes that the court of representatives was of much more importance in giving the Supreme Director omnipotent powers than the electoral machinery. If the constitution had been in operation for a long period, the electoral machinery might have become the real source of autocratic power. Galdames, pp. 546 and 552.

57 *Ibid.*, p. 552.

58 *Ibid.*, p. 553.

59 Art. 123.

60 Art. 120.

61 Art. 121.

62 Orrego Vicuña, *op. cit.*, No. 52, p. 32; Galdames, p. 555.

63 Huneeus, p. 51; Galdames, p. 539. Art. 81 reads as follows: "The Supreme Director will always be elective and never hereditary; his term shall be six years and he may be reelected once for four years more."

64 Galdames, pp. 555 *et seq.* for the political movements of 1823.

65 *Ibid.*, p. 562. The members of the board were José Miguel Infante, Fernando Errázuriz and Mariano Egaña.

66 The other members were Manuel Novoa for Concepción

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and Manuel Antonio González for Coquimbo. Galdames, p. 570.

67 Anguita, *Leyes*, Vol. I, pp. 114-118. This document was not properly a constitution but a makeshift arrangement similar to the project of federation of 1812. It contained forty-one articles with sections devoted to *Disposiciones Generales, Gobierno, Senado, Potestad Judicial, División Política del Estado, Congreso Jeneral. Sesiones*, Vol. VII, treats of the *Congreso de Plenipotenciarios*. For the Act of Union see pp. 33-36.

68 Galdames, p. 571.

69 Galdames, p. 595.

70 *Ibid.*, p. 598. Juan Egaña was born of a Chilean father in Peru, where he received the degree of doctor of civil and canon law. Juan Egaña and his son, Mariano, played important rôles in the revolution and during the early days of independent Chile. There is as yet no good biography of Juan Egaña. For the purposes of this study the chapters in Galdames' *La Evolución* are the most satisfactory. The first, pp. 209-257, is devoted to Juan Egaña's project of 1811 and the second, pp. 567-658, to the constitution of 1823. See also Figueroa, *Diccionario Biográfico de Estranjeros en Chile*, pp. 80-81; and Marcial Martínez, *Obras Completas*, Vol. 10, pp. 373-395.

71 Galdames, p. 598.

72 *Ibid.*, p. 600. A very interesting document entitled *Memoria para la Constitución de Chile Promulgada en 1823*, signed by Juan Egaña, is found in *Rev. de Hist. y Geog.*, Vol. XLII, No. 46, pp. 188-223. It is a defense of the constitution, an attack on those who caused it to fall, and an explanation of many of its virtues. Egaña's faith in his own handiwork is very clear, as is his bitterness at the downfall "of the most celebrated (*festejado*) and most solemnly recognized code of the nation" (p. 223). His final outburst is, that in Chile Directors were becoming more and more like Ferdinand VII, in which case no liberal and intelligent constitution would be respected.

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73 Galdames, p. 624.

74 Because Egaña was an avid reader, a scholar and a profound thinker, one of his greatest handicaps was his vast erudition.

75 Many of Egaña's writings have been reprinted in the *Col de Hist. i Docs.* In Vol. 18, pp. 3-24, is a speech receiving Carrasco as vice-patron of the University of San Felipe; on p. 19 he discusses the economic conditions of Chile. See Vol. 19: *Hechos Memorables*, pp. 47-95; *Plan de Gobierno*, pp. 99-109; *Plan de Defensa*, pp. 113-166.

76 Galdames, pp. 246, 249, 252, 255. References are found in these pages to Egaña's readings and to his constitutional philosophy.

77 Galdames, p. 623.

78 For the constitutions of Juan Egaña see Anguita, *Leyes*, Vol. I, pp. 126-143; for the project of 1811 see *Sesiones*, Vol. I, pp. 212-255; for the constitution of 1823 see *Sesiones*, Vol. VIII, pp. 644-661. Vol. VIII of the *Sesiones* is devoted to the constituent congress of 1823. References to the constitution, debates and comments are found on pp. 113, 275, 276, 435, 458, 459, 470, 528, 565 and 572-641 *passim*. Egaña's part in framing the constitution of 1833 is discussed below, p.

79 Arts. 21-27 and 28-32. The council of state was divided into seven sections: 1. Internal government, justice, legislation and elections; 2. Commerce and foreign relations; 3. Education, morality, services, *mérito nacional*, ecclesiastical affairs; 4. Treasury; 5. Army and navy; 6. Mines, agriculture, industry and arts; 7. Public establishments and police. The members, unsalaried, were two judges of the supreme court, a high ecclesiastic, a military chief, a fiscal inspector, and two directors of national economy. It was to be consulted regarding bills, appointment of ministers of state, budgets and in grave problems.

80 Art. 116-179.

81 Roldán, p. 89; Huneeus, p. 51.

82 Arts. 176-179.

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- 83 Arts. 190-224.
- 84 Art. 195.
- 85 Arts. 75-91.
- 86 Art. 96. *Censura* meant "the right of the nation to remove the functionaries if it is believed that they do not fulfil their obligations or that they abuse their stewardship".
- 87 Art. 86.
- 88 Arts. 92-93. The determination of fitness is expressed by the Spanish verb, *calificar*. See *Infra*, p. 102, for fuller discussion.
- 89 Art. 99.
- 90 Art. 95.
- 91 Arts. 191-193. Military and political functions were united in the departments.
- 92 Art. 14.
- 93 Art. 88.
- 94 Art. 101. That is, as the courts of appeals were created.
- 95 Art. 102.
- 96 Art. 103.
- 97 Art. 100.
- 98 Arts. 106-107.
- 99 Art. 114.
- 100 Art. 115: 1-22.
- 101 Arts. 35-40.
- 102 Arts. 60-74.
- 103 Art. 69.
- 104 Arts. 14-20.
- 105 Art. 18:9.
- 106 Art. 18:3.

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107 Arts. 52-59 outline "other methods of making effective the attributes of the senate". Each of the nine senators was given the general supervision for one year of a different branch of government. Three were entrusted with the duty of keeping track of the activities of all citizens so as to reward them with their *mérito cívico* or *benemérito* or *benemérito en grado heróico* degrees, or to take steps to instruct or punish those not living up to the standards set. Evidently *mérito cívico* corresponded to a B .A. in patriotism; *benemérito* to an M. A.; and *en grado heróico* to either a Ph. D. or an LL. D. in the arts of citizenship. Every part of the country would be visited by a senator once every three years. On these tours the senators were to observe conditions in eleven different fields (Art. 58:1-11) which included behavior of citizens and functionaries, observance of laws, the militia, morality, religion, education, expenditures and collection of revenues, etc.

108 Arts. 41-51.

109 Galdames, p. 617.

110 Arts. 249-261.

111 Art. 249.

112 Art. 251.

113 Art. 254.

114 Art. 258.

115 Art. 259.

116 Galdames, p. 640. Of all the Chilean writers whose works the author has consulted, Luís Galdames is the only one who has consistently studied, not only the constitutions he describes but their authors as well. The careless references and easy interpretations of Roldán, Huneeus, and even of Lastarria, lead one to believe that their reading of the early constitutions was hurried and superficial. An example is Roldan's statement, p. 90, that the executive of the constitution of 1823 was very weak and almost powerless.

117 Galdames, p. 641.

118 *Ibid.*, p. 646.

CHAPTER V.

FROM LIBERAL FEDERALISM TO CONSERVATIVE CENTRALISM, 1826 - 1833

In the years 1810-1823 Chile had tried many a form of government and each had failed. There had been governments with plural executives, administrations with a highly centralized executive power, an absolute monarchy during the royalist reaction, the constitutional dictatorship of 1818, the semi-monarchical régime of 1822, and the highly moral paternalistic and aristocratic government of 1823. A Chilean monarchy had even been considered. Only federalism had not had a trial. In the period 1826-1833 three more attempts were added to Chile's list of constitutional experiments. The first in 1826 under the aegis of José Miguel Infante was, at last, a federal régime; in 1828, under the guiding hand of José Joaquín de Mora, a compromise constitution was promulgated; and finally, with the omnipresent Diego Portales in the background as the ruling spirit, came the triumphant basic law of 1833.

The years between 1823 and 1828 are often referred to as a period of chaos and anarchy. And they were. Many problems, financial, religious, military and political, complicated the government of Freire, again a dictator. Maintaining himself by his control over the army—indeed, if it had not been for this support the country might easily have fallen apart—he assembled three fruitless congresses. The provinces of Coquimbo, Concepción and Santiago erected their own provincial govern-

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ments but left the army and foreign affairs to the dictator.¹ On January 10, 1825, a simple law completed the legal rout of the constitution of 1823. On November 12, 1825, Freire named José Miguel Infante, the liberal federalist, to preside over a directorial council while he went to Chiloé to finish the task of incorporating that archipelago into the nation. "The presidency of Infante in this provisional government meant the triumph of the liberal tendencies."² His federalist theories coincided with a federalism *de facto*, bringing interesting consequences.

Before describing the congress of 1826 it is necessary to sketch briefly some of the factors giving rise to the desire for the form of government it set up. The idea of federalism had certain historical roots.³ In 1812 and 1823 the three provinces had signed conventions to regulate their relations and to create provisional governments. Rivalry between them and jealousy of the capital were constant centrifugal forces. The friction between outstanding leaders of one province and those of another contributed their bit to the demand for greater provincial autonomy. Geographically the three provinces were somewhat dissimilar in climate, systems of production, economic problems and needs. Even the society of each had its own regional aspects and loyalties. More powerful than these forces, however, was an ideological or doctrinaire addiction to the concept of federalism.

All of the pent-up emotions of the federalists came pouring out in perfect torrents of oratory in the constituent congress that met on July 4, 1826. It came together after an election ordered by Freire and seems to be the first of the assemblies covered by stenographers whose notes have been preserved.⁴ The daily debates are available, and from these it is possible to create a clearer picture of a typical Latin-American constituent assembly in operation. This congress seemed to be more homogeneous,

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dynamic and liberal than any which had preceded it. It was furthermore decidedly federalist in tendency. Most of the discussions were paeans of praise to that idea. Freire in his presidential message sounded in an eloquent peroration the keynote of the convention: "A constitution—this is the universal cry of the Chilean people, the zenith of their desires, and the foundation on which all my hopes are based."⁵

It would seem that all the previous constitutions of Chile had counted for nought; in other words, none had been federal in character. Federalism and liberalism were considered virtually synonymous, and centralism and conservatism the cause of all evils. The enthusiastic orators adduced proofs of their contention. They pointed to Colombia, Peru, Buenos Aires and Janeiro (*sic*), to dictatorships, revolutions and sixteen years of instability, not only in those countries but in Chile, all of them the victims of one great malevolent institution—centralized government.⁶ The great efficacy of a federal regime was proved also by the history of the United States and Mexico. One of the members read a report from a message of the president of Mexico in which he attributed the great prosperity and progress of Mexico to its federal constitution.⁷ All the previous congresses of Chile had ended in violence.⁸ They had been dominated by a bigoted and entrenched aristocracy that refused to abolish the *mayorazgos* and *vinculaciones* and to adopt any liberal ideas. Santiago had grown while the other provinces vegetated—all due to centralism.⁹ Statements of this sort flew thick and fast while the feeble protests of dissenters are difficult to pick out.

José Miguel Infante¹⁰ was the prime leader and mover. He appears to have been a fanatic on the question. Even after the failure of his federal republic he doggedly persisted in preaching federalism in *El Valdiviano Fe-*

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deral, a magazine he financed and edited until his death in 1844. In the assembly he barked out with vehemence at those who failed to follow his arguments. He said on one occasion that no one with common sense could call himself a republican and not be a federalist.¹¹ On another he stated that "the day [federalism] is promulgated in Chile it will become unnecessary to fear base intrigues, and the influences of depraved individuals..... who seek to tyrannize us will end."¹² Argumentation was futile and infantile—"the benefits of federalism are too obvious..... to need proof..... the observation of facts is enough..... even despots tremble at the cry of *Federation*."¹³ His constant references to the United States would indicate that he considered the Constitution of 1787 the perfect and ideal one.¹⁴

A constitutional committee was formed.¹⁵ Cienfuegos, Infante and Vicuña were the most active members, judging by the number of their speeches. Farinas spoke frequently while Elizondo and Pineda rarely expressed themselves. It was the fate of the committee, however, to draft a complete code which remained merely on paper. Actual federalization came about as the result of provisional laws issued from time to time, but the draft, like Egaña's unpromulgated project of 1811, was nevertheless to exercise great influence on the next two constitutions of Chile.

The principal sources of the draft, as well as of the provisional laws were the Mexican constitution of 1824,¹⁶ the Constitution of the United States and the Spanish constitution of 1812. As the last-named was based largely on the French document of 1791, four countries may be said to have offered ideas for the federal constitution of Chile. It is the first case in the history of Chile where the basic law of a far distant Latin-American country was to influence its constitutional develop-

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ment, and one of the few instances of such borrowings in all Latin America in the period 1810-1835. Knowledge of English was restricted to very few, and the advantage of using the Mexican adaptation of the Constitution of 1787 was two-fold: it was in Spanish and, as was believed, it had been moulded to Latin-American needs and had been highly successful.¹⁷

The congress organized piecemeal a government by decrees issued from July 8, 1826 to February 14, 1827. The method is indicative of the sudden and frequent departures from an orgy of oratory in order to be practical. Chile was now definitely called a federal republic¹⁸ The term "president" was introduced; there was also a vice-president.¹⁹ Governors popularly elected were to replace the old-time delegates.²⁰ As a matter of fact, the central government itself appointed the first governors and was thus the first to violate the constitution. The municipal councils were to be popularly elected²¹ as well as the priests to parishes that were vacant.²² The latter was a distinct innovation. There should be no forcible recruiting.²³ In all the provinces assemblies were to be established. One deputy should be elected for each curacy (*curato*) by persons who either were literate or who possessed a capital of 1,000 pesos.²⁴

The territory was divided into eight provinces. If the division should prove unsatisfactory, the next legislature might alter the division or the boundaries in order to improve the territorial demarcation.²⁵ Popularly elected intendants should replace the governor-intendants.²⁶ Every municipal office was to be unrenounceable.²⁷

Ramón Freire was given the political and military command of the republic until the congress should elect another executive. He was to issue an amnesty to all.²⁸ The powers of the president were outlined in another decree. They were the usual functions of an executive

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but without the freedom from restraints granted to previous heads of government. He was rendered very much subject to the national legislature.²⁹ There were certain expressed limitations on his powers, and all authorities were prohibited from interfering with certain inalienable rights of the individual.³⁰ In this negative fashion a bill of rights was redacted.

The only novelties were the clauses which forbade monopolistic³¹ concessions to companies or corporations and the establishment of hereditary *vinculaciones*, honors,³² etc. The quartering of soldiers in private homes was also prohibited.³³ Only in the case of rebellion or invasion could the provisions regarding the individual and his property be suspended. The *residencia* was retained for all functionaries.³⁴

In this sequence the republic was organized by decrees and degrees. The omissions were as conspicuous as the haphazard manner of providing for a governmental machinery. Nothing was said about a legislative branch. The draft, though never promulgated, provided for all the usual elements in a government. Disorders within the congress and in the nation evoked the disgust evident in a decree dissolving the congress and appealing to the provinces. Federalism had failed. Liberalism would be given another trial but not another decentralized régime. This governmental paper joined all the other "permanent" and "ideal" constitutions and remained, for history, mute evidence of an unsuccessful experiment that left nevertheless a legacy of liberalism.

With the collapse of federalism problems piled up. The army was restless, the provinces were agog and even the central government was weakening. In ten months Chile had four presidents. Freire resigned, Pinto, the vice-president, assumed control, and it was he who got the congress to sign its own death warrant on June 19,

1827. The congress appointed a "national commission" to carry on. The provinces were dilatory in expressing their preference as to a form of government but finally cast their votes for a popular representative republican régime.³⁵

Pinto, a liberal, decided to convoke a new congress. Parties with apt appellations began to emerge and to appeal for popular approval. The liberal supporters of the government were known as *pipiolo*s and leaned to federalism. The ultra-federalists like Infante, very reduced in numbers, were practically impotent and unheard. Many liberals stood for a centralized régime "equidistant from despotism and demagogy". These, with Gandarillas among them, were joined by Diego Portales, who though not a liberal in their sense, had personal reasons for opposing Pinto. Because of his connection with it, the party was known as *los estanqueros*.³⁶ The *pelucones* were the conservative colonial aristocracy and the clergy. *Pipíolo* and *pelucón* for many years to come were the respective designations for the liberal and the conservative.³⁷ An unruly element was trying to get O'Higgins back from Peru into power again and formed an *O'Higinista* party.³⁸

The elections returned a great majority of the *pipiolo*s; and on February 25, 1828 the congress met. It named a committee to prepare a constitution,³⁹ which passed on to Santiago Concha the main responsibility therefor. He in turn entrusted to José Joaquín de Mora the task of compiling and editing it. In the end it was largely the product of Mora's political philosophy. In two months' time it was ready for debate, article by article, and on August 8, 1828 it was adopted.⁴⁰ Some observations regarding the setting of this document are pertinent at this point.

Not all the debates regarding the constitution of 1828

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have been preserved, but from two journals which appeared while the congress was in session it is possible to gain an insight into the mentalities of some of its leaders. One of these papers was *El Constituyente*, edited by José Joaquín de Mora, and the other *El Vija*.⁴¹ Though the articles they contain are anonymous in both cases, it is quite well substantiated that Mora's ideas and commentaries were expressed in *El Constituyente*.⁴²

A more realistic spirit began to appear. Disgust with former constitutional attempts was very evident in many articles. The former constitutions were characterized as vain or useless attempts; and every failure, it was claimed, had increased the feeling of disrespect for constitutions "which like fugitive meteors disappeared, leaving no trace behind them".⁴³ Somewhere it was intimated that the previous constitutions or those of other Latin-American nations had been "governments of the wealthy supported by armed forces and by vast clienteles".⁴⁴ This expression, though applicable in general to Chile's neighbors, referred specifically to Chile. The constituent assemblymen of 1828 very definitely wished to react against all forces of that sort. Though they were liberals it is evident that they were learning from experience. Especially vivid in their minds was the fiasco of 1826.

The rules laid down in one number of *El Constituyente* for developing "veneration" for laws and constitutions revealed that the Chileans were beginning to see clearly some of the reasons back of the disrespect for laws. One of them was the fact that the laws of independent Chile were considered in the same light as those of colonial Chile and therefore to be obeyed or not. Another was the crass ignorance of what a constitution represented. These rules were five in number: first, teach the constitution; second, multiply the number of printed copies

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and distribute them; third, organize national festivals dedicated to the constitution; fourth, request the priests to preach love for it; and fifth, send commissions of distinguished citizens to the provinces to explain and extol it.⁴⁵

Mora's philosophy is expressed primarily in the constitution, but his commentaries on the draft of the instrument of 1828 are illuminating. He perceived the folly and wastefulness of pure political ideology and frankly ridiculed many phrases and provisions. He could not understand why being born in Chile better fitted one to govern Chile. Many a Chilean had been born, for example, in Mendoza during the reconquest and was thereby debarred from certain offices. The birth of an individual, he contended, merely proved that at a given moment a woman had been at a certain place, and had nothing to do with a person's fitness.⁴⁶ The idea that marriage made a person responsible and entitled him to greater legal privileges seemed to him absurd. For, as he says, imagine a young scapegrace of sixteen who is forced to marry—why should that circumstance make him better fitted to vote than others of greater or lesser age?⁴⁷ Some clauses reminded him of a dictionary⁴⁸ and others he considered tautological and ludicrous.

In the constituent assembly itself there was much haggling over expressions, words and phrases but very little over great political principles. Most were unable to discuss finer points of political science than the merits or demerits of federalism or centralism. Debates had therefore to be restricted to questions of language. Was the nation, for example, a union or an association? If one or the other, was it political, or of native or legal citizens, or both, or none, or of all Chileans, etc.? This discussion extended over several days.⁴⁹ It would have been comprehensible in 1810 or 1818, when Chile began her

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political life, but in 1828, after so many constitutions and ten years of experience, it would seem that at least some details of constitutional language might have become stereotyped. The changing character of the personnel of the assemblies, the abysmal ignorance of political science and the fatal attractiveness of words explain the temper and behavior of this assembly and others.

The preceding paragraphs must make it clear that after ten years of independent life there was still much to be accomplished, even though some progress can be registered. It was in the kind of atmosphere just described that the constitution now to be discussed came into being.

Its 134 articles were based mainly on the French revolutionary constitutions, the Spanish constitution of 1812, the earlier ones of Chile, and on Infante's project of 1826.⁵⁰ It was distinctly a compromise between centralism and federalism but not between liberalism and conservatism, as its spirit was essentially liberal throughout. Many of its liberal characteristics are discussed below. "It was far too liberal for its day and did not withstand its first test."⁵¹ The revolution of 1829 which merged into a civil war overthrew it and its supporters.

The constitutions of 1828 and 1833⁵² created similar machineries of government, except in the administration of the provinces. Theoretically the constitution of 1833 was a revision of that of 1828. Keeping in mind the liberal origin of the one and the conservative origin of the other, and the fact that the first of these was really never put into operation, it is justifiable to discuss here the points of variance between the two.

The constitution of 1828 was very liberal in regard to citizenship and religion. It retained naturalization *ipso jure*, which was abolished in 1833. In 1828 the rights of man received more attention, not only in the section on rights but also in the provincial assemblies the

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individual was accorded a larger degree of self government. Whereas the constitution of 1833 had an arbitrary number of senators—twenty, that of 1828 provided that two should represent each province.⁵³ More deputies were to be elected according to the first than to the second, and the property qualifications were higher in the latter document.⁵⁴ All money bills were to originate solely in the chamber of deputies in both cases.⁵⁵

The law-making procedure according to the constitution of 1828 was simple. If both houses passed for the second time a bill that had been vetoed by the executive he must promulgate it as a law.⁵⁶ In that of 1833, if the executive rejected a bill *in toto* it was considered as not having been proposed at all.⁵⁷ Also a two years' delay and other trammels imposed for the reconsideration of a bill rejected by the executive slowed up the law-making procedure and gave the executive great leverage in controlling legislation.⁵⁸ It was consonant with the fundamental principles of Mora, as in the code of 1828, that the legislative should be stronger than the executive; and the ease with which the legislature could override a presidential veto illustrated one of the many ways in which that document respected the individual's right to govern himself.⁵⁹

The constitution of 1828 provided for a vice-president while that of 1833 did not. He was to be subject to all the regulations affecting the president. Both had to give up their offices the very day their terms expired whether new executives had been elected or not.⁶⁰ They were impeachable during their terms and for a year after their termination.⁶¹ The document of 1828 also outlined a number of limitations upon the executive's powers and activities⁶²—it provided a five-year term without immediate reeligibility,⁶³ whereas the constitution of 1833 was,

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as will be seen, most generous in all its provisions regarding the executive.

According to the basic law of 1828, furthermore, in each province there were to be a provincial assembly and an intendant. The deputies of these assemblies should be elected directly by the people for two years. Some of their functions were to nominate senators and propose lists of three for such local officials as intendants, vice-intendants and justices of the peace. Others were concerned with local problems, projects, improvements, establishments, transportation, production, revenues, census, etc. The intendants and vice-intendants were to be chosen by the executive from the lists in question, presented by the provincial assemblies. The municipal governments and the local governors were provided for on liberal principles. The former should be elected directly by the people and the governors by the municipal government. Within the field of their jurisdiction they were practically autonomous.⁶⁴

The constitution of 1828 has been variously judged,⁶⁵ some considering it the best evolved in Chile, others praising its liberal spirit and many thinking it far too advanced for its days. Still others have believed that the civil war, which it indirectly occasioned, was due to its imperfections. Thus maligned or praised, even in its day it caused much comment and produced the first real constitutional problem of Chile. It also had the distinction of having influenced the framers of the Uruguayan constitution of 1829.

The constituent assembly that gave this document to the light of day closed its sessions June 31, 1829, after naming a commission to carry on until the elections for a congress and executive should be held. The congress almost literally dashed itself and the country to pieces when it came to deciding the election of the vice-president

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as no one had received an absolute majority in the provincial electoral assemblies. Whether the congress violated the spirit or the letter of the constitution when it chose Joaquín Vicuña does not belong in this discussion. The fact is that Vicuña was a liberal while the two with more votes than he were conservatives.⁶⁶

This question again divided the country into two groups:⁶⁷ the *pipiolos* on one side defended their congress and the election; on the other side were the *pelucones*, *estanqueros* and *O'Higinistas*. Pinto declared the elections null and void, resigned and handed the presidency over to Vicuña. This was the last straw, and in the civil war which ensued General Prieto led the revolting conservatives and General Freire the liberals. Both armies, one the *constitucionalista*, the other the *libertador*, were fighting for the constitution—a constitution one party had violated and a constitution the other had never accepted! Such was the *casus belli*.

A self-appointed board of government in Santiago—of conservatives—gave way to a congress of plenipotentiaries of the provinces. This assembly annulled the acts of the previous congress, chose a conservative president and vice-president and called Diego Portales to be the minister of war and interior. Soon the battle of Lircay in 1830 was to give the conservatives the palm and settle which party was henceforth for many decades to direct Chile's development.

The creole aristocracy as a class, that is, in its collective and most conservative aspect, had not had much chance to control affairs. They had lacked a leader. Now they had one in Diego Portales,⁶⁸ in every way a man after their own heart. A mixture of Hamilton and Cavour, this remarkable man, ruling from behind the scenes, brought the creole aristocracy into its own.

The liberals had confiscated church property, abolished

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the *mayorazgos* and *vinculaciones*, and attempted to en-throne individualism by a decentralized government. They had let loose many forces which instead of being progressive turned out to be anarchical. The army had taken too active a rôle in recent political movements and was wearing out the patience of the people and their gratitude for its part in emancipating Chile. Wary with constant turmoil, nearly all Chileans were ready to settle down on any basis that would bring peace and prosperity.

One man seemed to see more clearly than all others the problems at hand, the elements available for solving them and the methods which had to be used. A business man, a member of the creole aristocracy, he won the confidence of the conservatives and the imagination of the masses. As minister, while presidents were changed over his head, he set himself, like Cavour, thoroughly to prepare the stage before another constitution should be foisted on the country. Diego Portales by force and by common sense accomplished what all others had failed to do. Common sense as a sound principle of political science had been curiously overlooked!

Portales first reformed the army—exile, execution and demotion were methods used. He subordinated that body to the will of the civil authorities and excluded all but loyal conservatives from the government offices. He restored the Church its property and paved the way for a greater union and coöperation between the Church and the state, not because he was primarily religious, but he knew his people and the value of the Church as a stabilizing agency. He restored the *mayorazgos* and *vinculaciones* and thereby cemented the loyalty of the creoles. He improved the administration of justice. Business prosperity began to return. Relying on a willing aristocracy, an obedient army and a helpful clergy as the sole vital social forces of Chile capable of giving to the state a

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permanent organization adaptable to Chile's needs and conditions, he opened the way for the framing of another constitution. Portales' intuition—he had no school-
ed philosophy—led him to believe that elements born of the soil would create a government appropriate to them, and that was the only kind which could take root and become permanent.

The executive and the plenipotentiaries issued a law for elections to a congress. They revised the electoral system provided in the constitution of 1828 so as to leave the control with the upper classes. The *pipiolo*s refrained from voting, so that there was no contest.⁶⁹ The congress met June 1, 1831. On September 18 Prieto was made president of the republic, a post Portales refused to accept.

The battle of Lircay did not solve the constitutional problem! For the first time in Chile's history genuine constitutional questions began to be ironed out in assembly halls rather than on the field of battle. Definite progress in constitutionalism was thus registered and though, as has been remarked, Chile's constitutional practice might differ from that of older and more stable states, it was nevertheless constitutional practice. In this case, Article 133 of the constitution of 1828 was debated both as to its spirit and letter. And this oratorical battle was the tangible evidence of the constitutional advance, because there had been no particular qualms about outlawing previous documents on the ground that their clauses on revision or amendment were not being observed.

The article just referred to stated that the constitution of 1828 could not be revised or amended until 1836. After many debates the government decided to appeal to the congress of plenipotentiaries which was still acting as a sort of permanent committee.⁷⁰ The congress suggested that the people be requested to empower their

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senators and deputies to revise the constitution. With the exception of the change in date, the provisions of Article 133 were to be fulfilled. When congress met its members had received the desired mandate from the people.

Thus in accordance with the same article, on October 1 a "great convention" was convoked. This body was to be composed of thirty-six individuals—sixteen members of the congress and twenty well-known citizens. Congressmen however, might sit in their character as citizens and fourteen did. In this manner only six⁷¹ were not members of the legislature. The choice of the candidates was made according to a list prepared by the minister of the interior, Tocornal, a pawn of Portales.⁷²

The principle governing this constituent assembly was, "that the constitution be revised with complete abstraction from theoretic principles in order to adjust it perfectly to the present cultural and economic state and to the actual needs of society."⁷³ That the interpretation of these needs would be the conservative is clear from the manner in which the convention was formed. Two of the six "citizens" died and the majority of the other constituent legislators and citizens were still very inexperienced and immature in constitutional matters.⁷⁴ Only two dared to speak out at all besides Mariano Egaña and José Gandarillas who dominated the convention by their culture, experience and personality. Mariano Egaña after five years in Europe, including a long stay in England, had returned more conservative and more committed to his father's ideas than ever. Gandarillas upheld the liberal cause. True, his was a moderate liberalism. The generality of the members, however, leaned toward the conservative leader.

After the convention met it appointed a committee to determine⁷⁵ whether the actual drafting should be done

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by a committee or by the convention as a whole. The former procedure was adopted and those chosen were Egaña, Elizalde, Vial, Santelices, Echevers, Gandarillas, Tocornal (Gabriel), and Menezes. The convention disbanded for a year until October 25, 1832, when it met again to consider a project elaborated by the committee and a counter project written by Egaña. Five projects altogether were considered in the year devoted to the constitutional problem.⁷⁶

The struggle in the committee reduced itself to a constitutional duel between Egaña and Gandarillas. Egaña's project canalized more cleverly the cultural and economic energies of Chile and was the one finally to be adopted with slight modifications. Gandarillas was instrumental in imposing a few liberal alterations and the other members of the convention changed certain other matters.

Mariano Egaña while in Europe became enamored of the French charter of 1814.⁷⁷ Recalling his earlier predilection for a limited constitutional monarchy and his loyal admiration and emulation of his father, it is not surprising that he should return from Europe more and more convinced that either a monarchical régime or one similar to it was the only one which would satisfy Chile's needs. England was a monarchy. France, like Chile, had tried many forms of government and constitution and had returned to a limited monarchy. Bonifaciò had planted a monarchy in Brazil. The name did not matter so much.

But, as events proved, those systems of government most comparable to the one that had ended in 1810 and which made use of the elements developed during the colonial period and adapted to their environment were the ones which became fairly permanent. Whether by a constitution, as in Chile in 1833, or by a monarchy, as in Brazil, or by force, as in the case of the other coun-

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tries where dictators or partisan chieftains assumed supreme control, all the countries of Latin America reverted to a strong unified government *de facto* or *de jure* in the hands of one person. Francia in Paraguay and Rosas in Argentina exercised not much greater powers than those granted constitutionally to the president of Chile in 1833.

What Chile wanted and what Egaña proposed to give his country was tranquility, freedom from revolutions, business prosperity, security of property, "liberty with order", and above all a stable government that should possess sufficient strength to maintain itself in power. Like the bourgeoisie of France and the fathers of the American Constitution, the creoles in the convention were human beings with their interests to protect. Like them, they created a government in which their own influence and power should predominate. They owned the land and controlled all the productive institutions of Chile; they had power *de facto* and wanted it *de jure*; and they got it.

Article for article the project⁷⁸ of Egaña was debated, after other proposals had been rejected. All the rather peculiar elements were elided. These were certain articles and ideas borrowed from his father's constitution of 1823.⁷⁹

The spirit was not altered in spite of Gandarillas' strenuous efforts to liberalize it. Apart from the monarchistic tone, the document agreed with the ideal and ideas of Portales, and it was he who in the last analysis forged the mould in which it was cast.

The constitution of 1833, in the opinion of certain Chilean commentators, created nothing;⁸⁰ for, as they believed, successful constitutions were the historical products of the action and interaction of social and economic forces. All a constitution could do was to express and

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normalize this interplay, give it rules, oil the machinery, prescribe certain limits and adjust points of friction. This in sum was its achievement. For thirty-nine years it was not amended, and for ninety-two it was Chile's basic law.

The document is so well known that to describe fully its provisions would be a waste of time. It is easily obtainable in English and has been summarized in many text books.⁸¹ Furthermore, many of its main principles have already been discussed. A brief summary of it, however, will be included here for the sake of completeness.

The president was to be assisted by a council of state and by ministers who might sit in the congress.⁸² The legislature itself was to be bicameral. The day before its sessions ended a "conservative commission"⁸³ of seven senators should be elected by the senate, which constituted in reality a permanent legislative committee. The senate was to be composed of twenty persons at least thirty-six years of age who must have a minimum income of 2,000 pesos.⁸⁴ Thus only the wealthier members of the creole aristocracy could belong to it. It was given far more power than the lower house, primarily because of the attributes of the "conservative commission" which was an echo of the court of representatives of 1822. The judicial system was not outlined; as a matter of fact the judiciary created by Egaña in the constitution of 1823 as modified in 1824 remained the judiciary of Chile until 1876.⁸⁵ The provincial assemblies were abolished and some of their functions were transferred to the municipalities.

The country was to be divided into provinces, departments, "sub-delegations" and districts, governed respectively by intendants, governors, subdelegates and inspectors, all named by and agents of the executive, but form-

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ing a hierarchy. In capitals of departments there were to be municipal governments as in other towns where the executive and the council of state might think it convenient to establish them.⁸⁶

The people, that is, the few thousands permitted to vote by this constitution, were to vote directly for municipal councillors and for deputies to the congress.⁸⁷ The senators should be chosen by special electors⁸⁸ and the president by electors chosen in direct election by the people.⁸⁹ All other officers and magistrates were to be named by the president.⁹⁰

The virtual omnipotence of the president was derived from several factors. First, he enjoyed an absolute veto in legislation. In describing the functions of the congress the constitution mentioned two types of attributes. The first referred to "exclusive attributes" which were the approval or disapproval of financial reports and declaration of war; the qualification of their own elections; the acceptance or rejection of the resignation of the president; and the granting of extraordinary powers to the executive in a crisis.⁹¹ The second was devoted to those matters which "only by virtue of a law" could be passed on.⁹² These included the more important functions of an ordinary congress, and it was precisely these the executive might veto unconditionally.

Secondly, the senators were of the same social class as the executive. Their economic and social interests being common, their opinions would necessarily coincide on major matters. The long periods of recess when the "conservative commission" acted in lieu of the congress gave the executive an opportunity to put forth many measures which ordinarily would require the consent of the senate. This commission was one of the theoretic checks on the executive. The other was the council of state, but as all its members were directly or indirectly

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appointed by the president these two devices were actually ineffective.

In the third place, there was the practical irresponsibility of the executive, and his long term. Five years with immediate right to reelection was tantamount to giving the executive a ten years term. Furthermore, he was impeachable only after the conclusion of his term. This meant in the eleventh year after his assumption of power⁹³ By that time he would have been either shot or exiled, both good Latin-American customs, or the people would have become so inured to his government that no impeachment proceedings were apt to be begun.

His appointive powers, in the fourth place, were so extensive that he could control even the machinery for the direct elections, if that were necessary to keep out undesirables. He had the right to appoint most high officers directly. In some cases the approval of the senate or the "conservative commission" or the council of state was required, but as has been seen, these bodies would hardly oppose his will.

And finally, certain articles, unique even in early Latin-American documents, preceded the enumeration of his powers. In one of them he was made responsible for everything concerning the state,⁹⁴ and another gave him the right to declare martial law in any part of the republic with the consent of the council of state.⁹⁵ He might, moreover, command the troops in person with the consent of the senate.⁹⁶ In addition congress might vest him with extraordinary powers,⁹⁷ if these were needed for free, energetic and untrammelled action on his part. Some of these provisions meant the suspension of the constitution for fixed periods according to needs determined by the president himself. That Chile had no serious revolution until 1891 is partly explainable by these constitutional powers given to its chief magistrate.

FOOTNOTES

CHAPTER V.

1 Galdames, pp. 667-668.

2 Galdames, p. 669.

3 *Ibid.*, p. 671.

4 *Sesiones*, Vols. XII and XIII record the sessions of the assembly.

5 *Sesiones*, Vol. XII, pp. 43-48. The statement is quoted from a message of the Supreme Director to the constituent congress and is on p. 48.

6 *Ibid.*, pp. 30-34. These ideas form part of the contents of a manifesto of the inhabitants of the Province of Coquimbo to the people of Chile explaining their instructions in regard to the adoption of a federal form of government.

7 *Ibid.*, p. 32.

8 *Ibid.*, p. 67.

9 *Ibid.*, pp. 69 and 91.

10 See Figueroa, *Dicc. Biog.*, Vol. 2, pp. 112-114, for a short biography. See also Galdames, pp. 620, 682, 720. Infante was a member of a prominent creole family and was an outstanding figure in the revolution from 1810 on. His family represented mining and mercantile interests. An uncle, José Antonio de Rojas, was one of the first to introduce into Chile prohibited revolutionary literature.

11 *Sesiones*, Vol. 12, p. 102.

12 *Ibid.*, p. 91.

13 *Ibid.*, p. 91.

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14 *Ibid.*, p. 102.

15 *Ibid.*, p. 61. The project was dated December 1, 1826. It was presented January 19, 1827, considered first February 2 and discussed March 23. A full description of the constitution is found in Galdames, pp. 704-714. Many authors pass over this phase of Chile's history or treat it as part of the chaos or anarchy of the period 1823-1828.

16 Galdames, p. 719. The Mexican constitution is nearly always mentioned with that of the United States during the course of the debates.

17 One of the speakers in the assembly referred to this double value of using the Mexican constitution of 1824 as a model.

18 Anguita, *Leyes*, p. 168. July 14, 1826.

19 *Ibid.*, p. 167. July 8.

20 *Ibid.*, p. 169. July 26.

21 *Ibid.*, p. 169. July 27.

22 *Ibid.*, p. 169. July 29.

23 *Ibid.*, p. 170. August 24.

24 *Ibid.*, pp. 170-171. August 30.

25 *Ibid.*, p. 171. August 30.

26 *Ibid.*, p. 173. October 12.

27 *Ibid.*, pp. 173-174. December 16.

28 *Ibid.*, p. 174. December 25.

29 *Ibid.*, p. 174. February 14, 1827. Art. 1.

30 *Ibid.*, p. 175. Art. 6.

31 *Ibid.*, p. 176. Art. 7.

32 *Ibid.*, p. 176. Art. 7:12.

33 *Ibid.*, p. 176. Art. 7:13.

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- 34 *Ibid.*, p. 176. Arts. 9, 10.
- 35 Galdames, pp. 734 *et seq.*
- 36 *Ibid.*, pp. 741-742. Portales came into prominence as the manager of *Portales Cea. y Cia.* which had obtained the *estanco del tabaco* or tobacco monopoly.
- 37 *Pelucón* meant bigwig; *pipiolo*, novice or greenhorn.
- 38 For the rise of parties see the pamphlets of Alberto Edwards, *Bosquejo Histórico de los Partidos Políticos Chilenos*; and of José A. Alfonso, *Los Partidos Políticos de Chile*.
- 39 Galdames, p. 752.
- 40 *Ibid.*, pp. 753-755. José Joaquín de Mora was a Spaniard who had recently come from Spain where his ideas were too liberal. He had spent several years in England and in Buenos Aires. "He was to contribute much to the culture and education and to the press of Chile, and not the least of his achievements was the constitution of 1828."
- 41 *Sesiones*, Vol. XVI, *Congreso Constituyente*. . . . 1828. Numbers of *El Constituyente* are found in pp. 27-45; of *El Vija* in pp. 45-48. Some debates have been reported *verbatim* and are scattered throughout the volume.
- 42 Figueroa, *Dicc. Biog. de Est. en Chile*, p. 154. Mora is mentioned both as the author of the constitution of 1828 and as the editor of *El Constituyente*.
- 43 *Sesiones*, Vol. XVI, pp. 17, 27, 28, 29, 45.
- 44 *Ibid.*, p. 18.
- 45 *Ibid.*, pp. 29-30.
- 46 *Ibid.*, p. 40.
- 47 *Ibid.*, p. 33.
- 48 *Ibid.*, p. 33.
- 49 *Ibid.*, pp. 81-85.

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50 Galdames, p. 753. For the constitution of 1828 see Anguita, *Leyes*, Vol. I, pp. 181-189; also *Sesiones*, Vol. XVI, pp. 285-294.

51 Galdames, *Estudio de la Historia de Chile*, p. 249.

52 For the constitution of 1833 see Anguita, *Leyes*, Vol. I, pp. 214-226.

53 Const. of 1828, Art. 30; Const. of 1833, Art. 24. Hereafter the words, "Const. of" will be omitted and only the date given.

54 1828, Arts. 25, 28; 1833, Arts. 19, 21.

55 1828, Art. 47; 1833, Art. 40.

56 1828, Arts. 49-57.

57 1833, Art. 45.

58 1833, Arts. 40-51.

59 *Sesiones*, Vol. XVI, p. 17.

60 1828, Art. 76.

61 1828, Art. 81.

62 1828, Art. 85.

63 1833, Art. 61.

64 1828, Arts. 108-121.

65 Federico Errázuriz, *Chile bajo el Imperio de la Constitución de 1828*. Errázuriz, a liberal, devoted his entire work to refuting those who maligned it and imputed to it the disorders which followed its promulgation. In order to justify his thesis he impugned the character and motives of Diego Portales and of the others who caused the downfall of the "constitution so inspired and so fitted to the needs of the people", p. 31. Lastarria, *op. cit.*, Vol. I, p. 202, believed that it would have accelerated the social regeneration desired by the liberals and that the clerical and aristocratic reaction caused its failure. Barros Arana, *op. cit.*, Vol. XV, p. 270, recognized its liberal features but believed it was foredoomed. According to Roldán, p. 83, it was "a model

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liberal code..... but not fitted to the circumstances". Galdames, in his *La Evolución*, p. 783, called it "the most perfect of its (Chile's) constitutions".

66 Errázuriz, *op. cit.*, pp. 94-95. Votes for the first four candidates were as follows: Pinto, 122; Ruiz Tagle, 98; Joaquín Prieto, 61; Joaquín Vicuña, 48.

67 For the course of the revolution of 1829 and the civil war, see Galdames, *Hist. de Chile*, pp. 250-251; and his *La Evolución*, pp. 800-808; and Errázuriz, *op. cit.*, who devotes many chapters to a description of the movements culminating in the victory of the conservatives.

68 For Galdames' estimate of Portales see his *La Evolución*, pp. 832-844. For a less favorable view see Errázuriz, *op. cit.*, pp. 195-199. An excellent characterization of Diego Portales is that by "Jaime Danskin" (pseudonym for Earle K. James), "Iron-Hand' Portales", in *Chile*, Vol. II, Nos. 8-9, 1926, pp.55-62. Another appraisal is by Rafael Luis Barahona, "Portales: su Época y su Obra", *Rev. Chil. de Hist. y Geog.*, Vol. XLII, No. 46, pp. 368-390.

69 Galdames, *La Evolución*, p. 854.

70 *Ibid.*, pp. 866-867.

71 *Ibid.*, p. 870.

72 *Ibid.*, p. 859.

73 *Ibid.*, pp. 871-872.

74 *Ibid.*, p. 874.

75 *Ibid.*, pp. 874-875.

76 *Ibid.*, pp. 877-878.

77 *Ibid.*, p. 897.

78 *Ibid.*, pp. 900 *et seq.* for the manner in which it was discussed.

79 *Ibid.*, p. 884.

80 The following writers, already cited, devote the major

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portions of their works to a legal exegesis of the constitution of 1833: Lastarria, Huneeus and Roldán. The long life of the document made it the object of the same type of consideration and criticism as the Federal Constitution of the United States. These authors subject it to a minute, article by article, dissection. None of them, however, has been much concerned with its background and history. Galdames is the sole author to survey all the influences leading up to the framing of this document. Other useful commentaries are found in Barros Arana, *op. cit.*, and J. B. Alberdi, *Bases i Puntos de Partida para la Organización Política de la República Argentina*, Chaps. IV and XXIII. Many others might be cited.

81 It is found in José Ignacio Rodríguez, *American Constitutions*, Vol. II, pp. 203-248, where it is reproduced with all the amendments up to 1906. The English translation parallels the Spanish text. See Anguita, *Leyes*, pp. 214-226, for the original text of 1833.

82 Art. 9. (Of 1833)

83 Arts. 57-58.

84 Arts. 24 and 32: 2, 4.

85 Huneeus, *op. cit.*, p. 51.

86 Arts. 115-131.

87 Arts. 124 and 18 respectively.

88 Art. 25.

89 Art. 63.

90 Art. 82, Clauses 6, 7, 8, 9.

91 Art. 36: 1-6.

92 Art. 37: 1-2.

93 Art. 61 and 83.

94 Art. 81. "The administration and government of the state are entrusted to the President of the Republic; and his authority extends to everything which concerns the preserva-

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tion of internal order and the safety of the Republic from external danger; observing and causing others to observe the constitution and its laws."

95 Art. 20. "To declare, in case of a foreign attack, one or various points in the Republic to be in a state of siege; but this is to be done with the consent of the council of state and for a specified period. In case of domestic disturbance the declaration of a state of siege at one or more points belongs to congress; but if that body is not in session, the President may make it, with the consent of the council of state, and for a specified period. If, upon the reassembling of congress, the time specified has not expired, the declaration made by the President of the Republic shall be considered as a bill or proposition of law."

96 Art. 82:17.

97 Art. 3:6.

CHAPTER VI

SOVEREIGNTY AND LIBERTY UNDER THE CONSTITUTIONS, 1818 - 1833

The systems of government and the history of the several constitutions in the period under consideration have been outlined in the two preceding chapters. Certain definitions and the relations of the individual to the government must now be examined. Though it is not the purpose to redescribe at this point the setting in which the basic laws appeared, many articles and chapters of the documents serve as excellent source material for social conditions. The sections devoted to sovereignty, independence, nationhood, government, territory, nationality, citizenship,¹ rights and duties of man, religion, armed forces, education, amendments and other matters bring out very clearly certain political, social, economic, religious and personal conditions which affected the life of the very instruments that have been considered.

Some of the conclusions regarding these conditions must be developed by inference, but the majority can be arrived at directly, due to the guileless editing of these documents. They are reliable sources of information because their drafters were statesmen who took their work seriously and realized the great responsibility thrown on their shoulders. It was not their purpose to convey information but in the very nature of things it was inevitable that they should quite unconsciously reveal much that their patriotism might have led them to conceal.

The changing definitions of sovereignty, nation, gov-

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ernment and territory throw a great light on the several factors moulding the political science of Chile. The changes were erratic, no chain of unwavering progress is to be observed; nor could one expect a solid advance to be made when so much depended on single individuals. Often the variations are solely verbal; at other times the authors indulge in political philosophizing. This is true of the documents of O'Higgins and Egaña.

It is not possible always to separate one from another the definitions of sovereignty, nationhood and government because often they are intertwined.² The differences to be noted may be treated topically and chronologically.

The first constitution of O'Higgins delved a bit into political philosophy with a statement that "sovereignty or the right to install its own government and dictate its own laws belonged to the Chilean nation assembled in a society by a natural and undeniable right. Therefore the nation should do these things through deputies assembled in a congress, and as this could not be done speedily a senate should act as a substitute and should issue provisional laws for the most urgent and necessary objects."³

The organic laws of 1822 and 1828, respectively, defined the nation as the "union of all Chileans"⁴ and as the "political union of all native legal Chileans." A discussion in regard to the difficulties about the language has been noted elsewhere.⁵ Egaña's instrument specifically stipulated that national representation should be for the whole nation.⁶

The constitution of 1833 asserted that the government of Chile was popular and representative, that the republic was one and indivisible, and that sovereignty resided essentially in the nation which delegated its exercise to the authorities established by the constitution.⁷ The other fundamental laws offered only slight variations in

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language. The constitution of 1826 created a federal republic which therefore could not be "one and indivisible."

A patent example of pure political ideology was the constant repetition of the assertion that Chile was a free and independent nation. The inclusion of this statement in the constitution of 1818 might be justified as a complement to and reaffirmation of the formal declaration of independence. There is an anomaly, however, in the fact that this instrument omits the "free and independent" clause, whereas those of 1822, 1823 and 1828 contain it. Only in 1833 did the framers of the constitution see fit to drop this utterance.

Not content with proclaiming a state of freedom, the language seemed unnecessarily specific: the Chilean nation is free and independent⁸..... of the Spanish monarchy and of all foreign powers⁹..... It will never become the patrimony of any person or family¹⁰..... and will belong to itself alone.¹¹ With the exception, of course, of the reference to the Spanish monarchy, similar clauses were found in the Spanish constitution of 1812.¹²

In view of the subsequent boundary disputes of Chile with Argentina, Bolivia and Peru, the constitutional articles describing the boundaries of the country have an interest arising from their negative qualities and omissions. The Chileans had no more knowledge of the definite boundaries of the captaincy-general than did any other Latin Americans of their own boundaries.¹³ All but one of the documents, however, described the territory and its boundaries with assurance and boldness.

The article devoted to territory in the constitution of 1833 differed little from the others. According to it the territory of Chile extended from (*desde*) the desert of Atacama to Cape Horn, and from the cordilleras of the Andes to the Pacific Ocean, along with (*compre-*

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diendo) the archipelago of Chiloé and all the adjacent islands and those of Juan Fernández.¹⁴

The constitution of 1818 contained no territorial delimitations and solely mentioned the three provinces of Santiago, Coquimbo and Concepción; that of 1822 had the same description as that of 1833 but in addition it spoke of natural boundaries and named the islands of Mocha and Santa María;¹⁵ that of 1823 was practically identical in language with that of 1822. The federalists of 1826 divided the territory into eight provinces which were described in a special law of August 30.¹⁶ The basic law of 1828 indicated the same boundaries as those outlined in 1833 and, like the constitution of 1826, divided the country into eight provinces.¹⁷

As can be inferred, the description of the boundaries was vague. Only a survey in collaboration with the neighboring republics could have made them more definite. Many of the other countries wisely inserted in their constitutions the stipulation that a law be passed to fix the boundaries at some future time. In the case of Chile most of the boundary settlements came as the result of acrimonious disputes and costly wars.

After describing the forms of government, defining and locating sovereignty and setting forth the territorial limits, the several constitutions passed on to outline the requisites for enjoying the privileges accorded to nationals and the requirements for exercising active citizenship, that is, the right to vote. It is interesting in this connection, also, to note what conditions had to be fulfilled before an individual might act as a servant of the state. There was a greater uniformity of purpose and tendency in the definitions of nationality and citizenship than in some other parts of the instruments. In the latter there could be no catering to principles and to revolutionary enthusiasms. In describing both nationality and citizen-

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ship the primary purposes of the framers were bound to come to the surface.

According to the organic laws under review persons born in Chile and their children were Chileans, i. e. nationals. Also, according to all of them, but that of 1833, foreigners who fulfilled certain family, residential or property qualifications, automatically became Chileans. Thus *jus soli*, *jus sanguinis* and *ipso jure* were primordial sources of nationality in Chile. With the exception of the constitution of 1833, which abolished nationalization *ipso jure* and introduced a legal procedure for naturalization, all the others agreed in general and differed only in details regarding marriage, property and residential requirements.

The underlying purpose in these documents was to create a large body of nationals rooted to the soil by ties stronger than mere loyalty to the country and gratitude for the privileges and protection it afforded them. The ownership of Chilean soil or a business supplying Chilean demands or marriage to a Chilean woman would theoretically develop material interests in Chile's welfare; at least these conditions constituted tangible evidences of a foreigner's worth to the nation. These requisites might seem too exclusive, were not the qualifications for citizenship applied to native Chileans themselves even more exacting.

The constitution of 1818 said nothing about nationality.¹⁸ That of 1822 was the most exacting in the amount of capital required of aliens.¹⁹ Egaña's constitution was the most liberal.²⁰ The basic law of 1828 was more discriminating than the others regarding nationals because it established two categories: legal nationals—all those born abroad of Chilean parents and foreigners who satisfied certain residence and property qualifications; and native nationals—all those born in Chile. It was more

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liberal than that of 1823 in matters of residence and property, and more complete in that it took cognizance of bachelors, reference to whom was omitted from consideration in all previous documents.²¹

According to the basic law of 1833 all were Chileans who were born in the territory of Chile or were the children of a Chilean father or mother born abroad, by the sole fact of becoming domiciled in Chile. The children born abroad of Chilean parents in the actual service of the republic were Chileans for all intents and purposes, even those for which the fundamental laws required nativity in Chilean territory.

The foreigners who gained a livelihood from a science, art or industry, or who possessed real estate or invested capital, and who had resided for ten years in the territory of the republic and who declared before the municipality their desire to become domiciled, might become Chileans. Only six years' residence was required of foreigners who were married and had their families in Chile, and only three years of those married to Chilean women. The senate would have to pass on the fitness of all foreigners who applied for naturalization. The president issued the naturalization papers if all conditions had been fulfilled. All those who had obtained an especial grant of naturalization by the congress were also Chilean nationals.²²

Being a Chilean, that is, a national, did not imply that the person was also a citizen. The *sine qua non* of citizenship was first to be a Chilean, after which must be fulfilled other qualifications. Every national was given many rights, the protection of the state, and all the privileges and opportunities he needed to live a full life; and it was assumed that he would contribute to the welfare of the nation as well. The requirements for obtaining naturalization *ipso jure* and by voluntary legal

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process were the first limitations imposed to reduce the number of persons who might obtain the right to vote.

The 1818 constitution of O'Higgins was silent also regarding citizenship, whereas that of 1822 was simple and liberal in its demands: all nationals, twenty-five years old, or younger if married, who could read and write (after 1833), were citizens.²³ Egaña in 1823 lowered the age to twenty-one and extended the time for exacting the ability to read and write to 1840, but added several requisites one of which every would-be citizen must fulfill.²⁴ There was no choice, however, in the following matter: all citizens must be Roman Catholics unless exempted by the legislative power. They must have been drilled (*instruidos*) in the constitution and registered in the great national book (*gran libro nacional*). They must have had their certificate of citizenship²⁵ also one month before the election.

The fundamental law of 1828 was the most liberal. Persons with an income sufficient to live on fulfilled all the property qualifications. They must be twenty-one, or might be younger if married. Legal Chileans also were considered active citizens. Foreigners who had served four years in the army as officers obtained thereby the right of citizenship.²⁶

The right of suffrage was granted only to active citizens in the constitution of 1833. Active citizens were all Chileans (that is, nationals) twenty-five years old or over, or twenty-one if married, who knew how to read and write²⁷ and who fulfilled one or the other of certain requirements. One was the ownership of real estate or capital invested in a business or industry. The value of the property and of the capital was to be fixed every ten years for each province by a special law. The alternative was the exercise of an industry or art, the income of which should be in proper proportion to the amount

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of the real estate or capital mentioned above. Furthermore, no one might vote who was not inscribed in the electoral register of the municipality and who did not possess his certificate of citizenship three months before the election.

The property qualifications are outlined in the electoral law of November, 1833 provided for by the constitution itself of that year. In this electoral law²⁸ a geographic sliding scale was adopted for the property qualifications of citizens. In Santiago, for example, the property was to have the value of 1,000 pesos, capital invested 2,000 and the income from a profession at least 200 pesos. For other provinces the respective amounts were 500, 1,000 and 100 pesos, and for still others 500 and 60 pesos, or a small bit of land under cultivation. Thus this law, in conformity with the constitution of 1833, imposed by far the most exacting property qualifications of all.

Not only did the property and literacy qualifications narrow the number of legal electors but the provisions on the loss and the suspension of the rights of citizenship all tended to have the same effect. The determination of mental and physical fitness, and solvency, was a matter in which unscrupulous and arbitrary activity might easily be indulged in. Those who controlled the electoral machinery might easily debar hundreds from the polls on trumped-up charges.

The quality of citizen with the right of suffrage was suspended, in the constitution of 1833, for the following causes: physical and moral incapacity which interfered with the free and reasonable use of the mental faculties; condition of domestic servitude; delinquency in paying taxes; and prosecution for a crime which merited corporal or infamous punishment. Citizenship was lost for the following causes: condemnation to corporal or infamous punishment; fraudulent bankruptcy; naturaliza-

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tion in a foreign country; acceptance of employment, office, salary or honors from a foreign government without special permission of congress; and residence abroad for more than ten years without permission of the president of the republic. But the constitution stipulated that those who had lost their citizenship might seek rehabilitation by applying to the senate for it.²⁹ All of the other constitutions had similar provisions. Egaña's included gambling and habitual drunkenness as causes for the suspension of citizenship.³⁰

When all is said and done, only a few thousands³¹ were given the right to participate in the government of the state, so difficult was it to satisfy all the requisites for citizenship. This narrowing down of the circle of the chosen, by imposing literacy³² and property qualifications, placed political power in the hands of the wealthy creoles. But the creoles were the only educated class in Chile and the only ones with any degree of enlightenment to lead the people on their political path. In those days it was assumed that ruling a state required intelligence, knowledge and, if possible, experience. The Chileans could not be blamed for not seeing a hundred years ahead. So, acting on this assumption and following almost universal practice, they offered the protection of the state to all, but the exercise of government to relatively few.

The liberalism of O'Higgins was misleading. For even if all nationals had been allowed to vote, the machinery of government was such that O'Higgins would have remained withal a dictator. The brief interlude of quasi-liberalism in 1826 and 1828 gave way to the highly conservative and exclusive electoral regulations of 1833. And almost without interruption the large landowning aristocrats ruled the nation until the first quarter of the twentieth century! In coming to this settlement the Chileans emulated rather widespread North American

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and European practice but particularly that of the *monarchie censitaire* of France.

Suffice it to say in regard to office-holding that the requirement that all candidates must be citizens with the right to vote excluded everyone except the few thousands mentioned above. Though the constitution of 1833 seems to be fairly liberal, it must not be forgotten that the financial qualifications for citizenship were much more stringent than in any of the other fundamental laws. Thus in the last analysis an even smaller class was given the privilege of serving in public offices. Egaña's ideas regarding an old Roman type of senate explain the heavy property qualifications for a senator in 1823.

After describing those who might become nationals and citizens the constitutions enumerated the inalienable rights³³ of Chileans. This was done simply and without high-sounding phrases. Many of the constitution-makers among Chile's fellow republics in America spent more time and devoted more space to bills of rights than to questions of government or war. They fiddled with rights while the nation burned, sublimely indifferent to the conflagration about them. Were they not dealing with immortal and, perhaps they thought, incombustible principles? The Chileans, too, enjoyed the sound of such phrases, but they did not let them become an obsession.

The rights were generally paper reforms indicative either of the idealism or self-interest—or both—of the authors of the constitutions. The most charitable interpretation is to view them as donations of the creole aristocracy to the masses. One of the fundamental ideas back of democracy, republicanism and popular sovereignty is the inalienable right of the majority of the people to govern themselves for the purpose of retaining and maintaining their social and political fates in their own hands.

With no representation in the assemblies or commit-

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tees in which the constitutions were framed, and debarred from participation in the government, the people were at the mercy of the aristocrats. As the sections on citizenship have clearly shown, the fundamental purpose of that gentry was to create a machinery of government whereby, through excluding virtually all but themselves from the polls, they might control the government and the means of perpetuating themselves in power. Therefore, with few exceptions, all the rights enumerated may be regarded as sops handed down to the masses, or phrases to satisfy philosophers, to make the new régime seem lighter, brighter, more humane and more tolerable than that which had been overthrown.

The substantive rights appearing in all the constitutions under consideration were: equality before the law, the inviolability of private property, the sacredness of the home, the sanctity of private correspondence, and the right of all qualified to serve in public office. The last one is the most pointed reference to the discriminatory policy of Spain and reveals the creole's resentment at having been kept out of offices which he felt he was qualified to fill and which were kept from him by the mere accident of his having been born in America. Other rights mentioned at times were: the right of petition, personal security, individual liberty, proportional taxation, freedom of movement, and the abolition of privileged classes. Many of these were soon proved to be mere rhetoric by the laws or decrees issued soon after the constitutions were promulgated.

Each constitution had a few rights or clauses among the bills of rights which were not to be found in the other documents. The first constitution of O'Higgins listed honor, money and good reputation as inviolable rights. His second in 1822 forbade the reestablishment of the Inquisition,³⁴ and prohibited monastic vows to all per-

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sons under twenty-five years of age because, as the article explained, they were too immature to be responsible.³⁵ Furthermore, no public official could be removed from office except by due process of law.³⁶

In Egaña's constitution, the innovations were: that "no person or group of persons might assume any or all of the sovereignty" (*sic*); defence, public administration and education were essentially national responsibilities; and that the constitutional guarantees extended to all who resided or should come to reside in Chile.³⁷ Egaña, too, abolished all the civil *fueros*—special charters of privilege and exemption—except the *fuero militar* of the veterans of the army.³⁸

The most important novelty in the 1828 constitution was the abolition of the *mayorazgos* and *vinculaciones*.³⁹ This, along with the tepid religious toleration, was as has been said one of the reasons for the failure of that liberal document. The wealthy aristocrats and the pious clergy would not have their sacred privileges tampered with. The document furthermore decreed that all who violated the individual rights were guilty of crime,⁴⁰ that every functionary was to be subject to the *residencia*⁴¹ and that "all acts not affecting anyone else belonged to God's jurisdiction" (*sic*).⁴²

The constitution of 1833 restored the *vinculaciones* and *mayorazgos* and was satisfied to abolish "privileged classes in general" (*sic*).⁴³ It reserved to every inventor and author the product of his labor.⁴⁴ It also forbade the armed forces from making any requisitions upon civilians except through civil authorities.⁴⁵

In the several constitutions the procedural rights had more prominence than the substantive. They treated of almost every phase of civil and criminal procedure. There were to be no arbitrary arrests. Prisons were to be clean, proper and legal places of detention. The jailers should

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keep a register and allow the prisoners to communicate with those who were to defend them. Prisoners need not incriminate themselves and must know the cause of their arrests. Punishments must fit the crime and physical torture was abolished. Judges whose impartiality was in doubt might be rejected; speed and fairness of justice was part of the judicial duty; only a judge might enter a home if it were to be searched. There were to be no *ex post facto* laws.

The procedural rights most frequently iterated in the documents of 1818, 1822, 1823, 1828 and 1833 were contained in the provisions abolishing bills of attainder, trials by special commissions, the confiscation of private property as a punishment, and (except in that of 1823) the use of torture. Egaña's philosophy of justice was set forth in his constitution. Prompt penalties, honesty of customs, the certainty of reward for virtue, said Egaña, were the principles whereby the law would prevent crime.⁴⁶

Preoccupation with bettering the administration of justice was apparent in the procedural rights and in the sections creating judicial systems. There can be no doubt from a study of these sections that one of Chile's greatest causes for complaint against the old régime lay in Spain's faulty and antiquated system of administering justice.

The two constitutions of O'Higgins had lists of the duties of social man. The golden rule was the philosophic principle underlying the duties. Every man should be a good father, son, friend or soldier. He should submit obediently to the constitution, respect all constituted authorities and fulfill all his obligations to God.⁴⁷

The Chileans had no choice in the matter of religion. According to all the basic laws, (with the exception noted in regard to the language of the constitution of 1812) the Roman Catholic Apostolic was to be the sole and ex-

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clusive religion of the state. In 1818 and 1822 the government had as one of its prime functions the protection of that religion, its conservation and the maintenance of its purity and inviolability. The constitution of 1818 specified that all cults contrary to the teachings of Jesus Christ were prohibited.⁴⁷ Egaña excluded all exercise and worship of any other religion.⁴⁸ The constitutions of 1828 and 1833 excluded only the *public* observance of another faith.⁴⁹ Only that of 1828 provided that no one was to be molested for his private opinions and thus opened the door timidly to religious toleration.⁵⁰

The almost universal adoption of similar exclusive articles in all the constitutions of Latin America stands as eloquent as the Andes. So far as Chile was concerned the experience of 1812 and 1828 proved conclusively that the roots of the Church were far stronger and deeper than those of any other institution of the old régime.

The measures taken for the improvement of education, of course, cannot be judged solely by the articles in the Chilean constitutions. Laws without number were passed by every congress. Every statesman and publicist with any vision realized the utter inadequacy of the educational plants and systems inherited from the colonial régime. Their relation to national stability and prosperity was understood, and every class that came into power devoted time and thought to the question.

Though education received no special mention in O'Higgins' first constitution, his second, of 1822, was the only one which had a separate chapter devoted to it. O'Higgins was probably impressed by Napoleon's ideas on the matter and with the value of a standardized educational system in developing uniformly loyal patriots.

According to the constitution of 1822 national education was to be standardized in the schools. An effort was to be made to establish primary schools in all towns

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to teach the youth religion, reading, writing, arithmetic and the duties of man in society. With this aim, the Supreme Director was to see that the convents and monasteries arranged their curricula to conform with the general plan of education provided by the congress. The National Institute was to be the object of special attention.⁵¹

In the constitution of 1823 education was discussed in the chapter on national morality. Egaña, the philosopher, believed more in the cultural than the practical value of that discipline. He, however, would probably have included courses of study on the constitution in his schools, for as has been said one of the requisites for the exercise of suffrage was knowledge of the country's fundamental law.⁵²

That constitution offered governmental scholarships to the children of *beneméritos* (especially deserving citizens) and free education to youths "with singular talents for arts or sciences". It also stated that the promotion of industrial, scientific and national instruction was one of the primary duties of the state. Therefore in the capital there should be normal institutes to serve as models. And primary schools were to be established in all towns and parishes.⁵³

The constitution of 1828 had no special clauses devoted to education. That of 1833 was more advanced in its language and more practical in the steps it provided for regulating the public educational system. It echoed some of the ideas expressed in 1823 and created a superintendency of public instruction whose function was to inspect and direct national education under the authority of the government, according to a general plan to be formulated by the congress.⁵⁴

Interesting sidelights on the question of literacy and the need for improving the educational systems, it will

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be recalled, were the electoral qualifications requiring ability to read and write on the part of the voters. Evidently many of the creoles themselves were illiterate, because the constitutions made the literacy requirement effective from seven to eleven years after the constitutions were to be promulgated.

Even if there had been printing presses in Chile during the colonial period not much excepting religious works would have been published. The circulation of books and even of ideas by word of mouth was subject to a rigid censorship. Thus one of the inalienable rights most frequently mentioned in the constitutions is that which regards freedom of thought and publication; and the most definite progress towards liberalism is registered in this field. Liberty of expression and of publication had its ups and downs, but it emerged in the constitutions of 1828 and 1833 free and uncensored. The only limitations were for abuses of such freedom, and those were to be tried by juries. Incidentally, this was the only provision for trial by jury. Any penalty meted out would have to be in accordance with a special law which was to be formulated by the congress. The last constitution specifically prohibited any censorship before publication.⁵⁵

O'Higgins had too much difficulty with the press to maintain the liberalism granted in his first constitution. The only limitations on free speech and publication in that document were for utterances and writings which threatened the peace of the state, its fundamental law and the purity of the Christian religion.⁵⁶ In 1822, however, he repented; so his second constitution contained no provision for freedom of thought and the press, and confined itself to prohibiting calumnies, libels and all incitements to crime.⁵⁷ The document permitted the free circulation of books in all foreign languages if they were

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not obscene, immoral or incendiary.⁵⁸ It provided, too, that anyone accused of libel or calumny would be immediately summoned before seven *literati* chosen by lot from a list of twenty. The accused might defend himself before them using as many character witnesses as he deemed convenient for his defense. Any sentence involving a penalty, however, had to be sanctioned by the supreme court.⁵⁹

In the constitution of 1823 Egaña created a "tribunal for the freedom of the press" composed of seven individuals chosen from twenty-one. These judges might be rejected and others substituted. It is not stated clearly, but the remaining fourteen individuals were probably to be selected in case any of the seven were challenged. There were also to be counsellors and *literati* chosen by the national chamber to act as censors.⁶⁰

Freedom of publication was to be protected and the press rewarded as long as it contributed to increasing civic virtues and knowledge. The press might make known the misbehavior of public functionaries, but it was prohibited from publishing anything regarding the private lives of citizens or interfering in religious matters.⁶¹

Every manuscript should be submitted to a previous censorship, and the author was given three options. One was to correct objectionable parts of the text; another was to make a defense before the tribunal of the freedom of the press, and the third was to publish his work and suffer the legal consequences, if it were proved that any part of it constituted an abuse of the law.⁶² Writings might be submitted anonymously and their anonymity would be respected by the censor. Any censor who retained a manuscript longer than the legal time allotted became responsible for it, and the work might be published without untoward consequences to the author.⁶³

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The constitution of 1833, however, had no such provision for censorship. Its prescriptions were liberal even if the practice thereof was not.

O'Higgins' first constitution had no separate chapter on the armed forces, because the executive was given the command and organization of the military and naval forces.⁶⁴ The one following in 1822 had two short chapters devoted to this subject: one concerned the troops on active duty (*tropa de línea*) and the other the militia. The executive and legislative powers were to have full authority to determine the number of such troops and of the permanent forces on the frontiers, discipline, military schools and all matters regarding military promotions and salaries. In the same manner they should direct and control the naval forces. All the departments were to have their own militias which could not be sent out of the state without the consent of the congress. Their organization also was to be determined by the executive with the approval of the legislative power. The executive should not, unless absolutely necessary, make too great demands on the militiamen, lest their usual occupations be neglected because of unnecessary calls to arms.

This dual arrangement, nevertheless, gave O'Higgins virtually supreme control over the armed forces. The legislative power in reality was no check at all upon his activities, especially in those long periods when the court of representatives had legislative powers.⁶⁵ The dictatorship of O'Higgins based on his military power, thus, was sanctioned by the constitution.

As described in Egaña's constitution, the armed forces were to be composed of all able-bodied citizens and provided for annually by the senate. To enjoy the rights of citizenship every man must have been registered in the national militia from his eighteenth birthday on.⁶⁶

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The force was to be obedient and not a deliberating body, that is, it was to do and not to question why. It could not make requisitions on civilians except through a decree of the civil authorities. In every department there was to be a corps of infantry and of cavalry.⁶⁷

In this section of the constitution Egaña's unquenchable idealism broke through again. It declared that "the Chilean nation never will declare war, without first inviting its enemies, previously and publicly, to conciliate their differences by means of plenipotentiaries or by the arbitration of another power." Were the security of the nation threatened, however, the Supreme Director and the senate should take all defensive measures necessary.⁶⁸

According to the basic laws of 1828, Chileans able to bear arms were to be inscribed in the active or passive militia registry. The armed forces were to be composed of the regulars in the military and naval service and of the militia for which the congress should provide.⁶⁹ The articles regarding registration and the "obedient" character of the forces in the constitution of 1828 were also found in that of 1833.⁷⁰ This also declared null and void every act or decree of the president, senate, or chamber of deputies issued under the pressure of troops or of armed bodies of citizens.⁷¹ After the military had been reformed by Diego Portales and made subservient to the civil authorities, the constitutional provisions regarding the armed forces became more conservative. The contrast in language between the constitutions of 1818-1823, when the military was the most powerful class, and the constitution of 1833 is a striking evidence of the rise to power of the civilian elements of the creole aristocracy.⁷²

The constitutions of Chile, finally, had interesting provisions regarding the revision or the amendment of the documents themselves. That of 1822 prescribed that it

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could not be altered except by express order of the people manifested solemnly through their representatives. Any citizen might request observance of the constitution or call attention to its violation—violations being serious offences.⁷³

Egaña foresaw the difficulties which his constitution of 1823 would cause. He therefore proposed the creation of a commission of national conciliation, composed of three consultants whose function was to conciliate all disaffected parties and who while exercising their duties were to be absolutely inviolable in their persons. The constitution, furthermore, could not be suspended in whole or in part, not even by the senate and national chamber acting together. If there were real need for a revision, the national chamber should discuss the clauses to be revised in two-day sessions two months apart, and the suggested revision should be confirmed by the electoral assemblies. One of the clauses of the oath administered to all functionaries was, that if any of the conciliators mentioned above were violated in his person while exercising his duty the perpetrator should be punished with death.⁷⁴

According to the constitution of 1828, the congress was the sole judge of constitutional questions. A convention to meet in 1836 was to adjust all matters that were discovered to be faulty or revise the constitution if it needed alteration.⁷⁵ In the document of 1833 the constitution might be amended only after several time-consuming steps had been taken to determine the need of discussing a revision, then the need of a revision itself. Any such revision had to be approved by two-thirds of both houses, after they had been renewed. The amendment was then sent to the president who had the same power in this case as in an ordinary law. This meant that a revision depended, in the end, on the president.⁷⁶

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The difficulties of amending the constitution and the iron-handed rule of the creole aristocracy which controlled Chile from 1829 onward explain in some measure why it lasted until 1925. It was a document which created a government absolutely satisfactory to the landed aristocrats. It could be nothing else since they wrote it.

FOOTNOTES

CHAPTER VI.

1 The early Latin-American constitutions establish a great difference between a national and a citizen, both being conditions described by the English word citizen. The Spanish word *ciudadano*, literally citizen, referred solely to those persons with the right to vote; while the term *chileno*, for example, meant solely Chilean citizens in the sense that children are citizens of the United States or women were before they obtained the franchise. *Chileno* described a national while *ciudadano* a person qualified to vote.

2 The references in this chapter are to the constitutions of 1818, 1822, the formal document written by Egaña in 1823, the laws federalizing the State in 1826, those of 1828 and 1833. The Constitutions of Chile promulgated from 1818 to 1833 will be found in Ricardo Anguita, *Leyes Promulgadas en Chile desde 1810 hasta el 1° de Junio de 1912. Tomo Primero* 1810-1854. Constitution of 1818, pp. 51-59. Constitution of 1822, pp. 102-113. Constitution of 1823, first, pp. 115-118; second, pp. 126-143. Laws creating a federal republic, 1826-1827, pp. 167-188 *passim*. Constitution of 1828, pp. 180-188. Constitution of 1833, pp. 214-226.

3 Const. of. 1818, Tit. III, Chap. I, sole article.

4 Const. of 1822, Art. 1.

5 Const. of 1828, Art. 1. See footnote No.

6 Const. of 1823, Art. 1.

7 Const. of 1833, Arts. 2, 3, 4.

8 Const. of 1822, Art. 2. Const. of 1823, Art. 2. Const. of 1828, Art. 1.

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- 9 Const. of 1822, Art. 2. Const. of 1823, Art. 2. Const. of 1828, Art. 1. (Omitted reference to Spanish monarchy).
- 10 Const. of 1822, Art. 2. Const. of 1823, Art. 1.
- 11 Const. of 1822, Art. 2.
- 12 Const of Spain 1812, Art. 2.
- 13 *Supra*, page 42.
- 14 Const. of 1833, Art. 1. The Spanish words inserted are subject to various interpretations and are difficult to render into English. Many of the acrimonious debates in the settlement of boundary questions revolved around the meanings of such words.
- 15 Const. of 1822, Art. 3.
- 16 Anguita, *Leyes*, p. 171.
- 17 Const. of 1833, Arts. 6-7.
- 18 Galdames, p. 500. The absence of definitions of citizenship and nationality is explained by Galdames as follows: O'Higgins desired to have immigrants flocking from Great Britain and the United States, and feared that any definitions of citizenship and nationality might keep them away.
- 19 Const. of 1822, Arts. 4-5. It demanded 2,000 pesos invested in real property and an income of 4,000 pesos from some business.
- 20 Const. of 1823, Art. 6. It required solely of aliens the possession of an income large enough to live on.
- 21 Const. of 1828, Arts. 5-6. Bachelors must have the property or other requirements and eight years' residence.
- 22 Const. of 1833, Arts. 6-7.
- 23 Const. of 1822, Art. 14.
- 24 Const. of 1823, Art. 11. These were the possession of the *mérito cívico* or instead the contribution to the country of an invention, art or industry whose usefulness would be attested by the government.

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25 Const. of 1823, Art. 11. Property must have the value of 200 pesos; business, 500 pesos.

26 Const. of 1828, Art 7.

27 A transitory provision extended the time to 1840 when the literacy test was to be applied. *Disposiciones Transitorias*, Art. 1.

28 Anguita, *Leyes*, p. 229. *Elecciones. Reglamento-lei*, Art. 14.

29 Const. of 1833, Art. 10.

30 Const. of 1823, Art. 13:7.

31 Galdames, p. 918.

32 *Ibid.*, p. 917. Speaking of the literacy requirement, Galdames says: "Its adoption now (that is, in 1833) would restrict considerably the number of electors who would compose the 'legal state' since the knowledge of the alphabet had not spread even to the people with average fortunes."

33 A detailed analysis of the rights would serve no particular purpose. The articles in which they are located, together with the section, title or chapter heading, and a brief descriptive statement of the bills,, are indicated here. *Constitution of 1818*, Arts. 1-17, *The Rights of Man in Society*. Substantive and procedural rights intermingled. *Constitution of 1822*, Arts. 7-8, *Chileans*. Equality before the law and admissibility to all public employments. Arts. 198-229, *The Administration of Justice and Individual Guarantees*. These rights referred to defendants, prisons, jailers, judges, arrests, punishments, oaths, *et al.*, stressing the individual's right to great consideration and to correct judicial procedure. *Constitution of 1823*, Arts. 7-8, *The Chilean Nation and the Chileans*. The first related to equality before the law, admissibility to public employments and taxation in proportion to the person's ability to pay. Art. 8 was about slavery. Arts. 116-142, *The Judicial Power*. Many of these were properly substantive rights rather than procedural. Property, petition, homes, personal services, *fueros* were included indiscriminately with a number of other judicial rights similar to those described in the Constitution of 1822 in Arts.

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198-229. It added, however, rights regarding trials. *Constitution of 1828*, Arts. 10-20, *Individual rights*. The general principles were contained in Art. 10, "The nation assures to each man as imprescriptible and inviolable rights, *liberty, security, property, right of petition, right to publish one's opinions*." Other articles referred to slavery, arrests, detentions, trials, etc. Arts. 125-129, *General Provisions*. These were mainly devoted to the abolition of privileges, *mayorazgos* and *vinculaciones*. Others referred to equality before the law, admissibility to all public offices, *residencia* of all public officials, and the non-recognition of any courts outside the republic. *Constitution of 1833*, Art. 12, with seven sub-articles, *The Public Law of Chile*. Press, property, petitions, liberty of movement, proportional taxation, admissibility to public offices, and equality before the law were the subjects of these sub-articles. Arts. 132-152, *Guarantees of Security and Property*. In addition to the procedures described in the constitution of 1822, Arts. 198-229, there were others devoted to homes, correspondence, congress' sole right to impose taxes, personal service, industry, requisitions by armed forces, and the products of inventors or authors.

- 34 Const. of 1822, Art. 229.
- 35 Const. of 1822, Art. 220.
- 36 Const. of 1822, Art. 198.
- 37 Const. of 1823, Art. 9.
- 38 Const. of 1823, Art. 139.
- 39 Const. of 1828, Arts. 126-127.
- 40 Const. of 1828, Art. 20.
- 41 Const. of 1828, Art. 128.
- 42 Const. of 1828, Art. 12.
- 43 Const. of 1833, Arts. 1, 5, 162.
- 44 Const. of 1833, Art. 152.
- 45 Const. of 1833, Art. 150.

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46 Const. of 1823, Art. 135.

47 Const. of 1818, Tit. II, sole chapter. Const. of 1822, Arts. 10-11. Article 11 stated that any violation of the provision regarding religion constituted a crime against the fundamental laws of the country. Galdames, p. 492. Galdames believes that the reference to Jesus Christ indicated the hand of a priest in the writing of this document. *Infra*, p.

48 Const. of 1823, Art. 10.

49 Const. of 1828, Art. 3. Const. of 1833, Art. 5.

50 Const. of 1828, Art. 4. Galdames, p. 492. The country was not ready for anything akin to religious freedom and this clause in the constitution of 1828 was seemingly too liberal for its day. It was, according to Galdames, more the spirit which prompted it that caused the trouble. A class which favored religious toleration did not represent the Chile of 1828 and reflected only the beliefs of a very small minority.

51 Const. of 1822, Arts. 230-234.

52 *Supra*, page 114.

53 Const. of 1823, Arts. 254-258.

54 Const. of 1833, Arts. 153-154.

55 Const. of 1828, Art. 18. Const. of 1833, Art. 12., Paragraph 7.

56 Constitution of 1818, Tit. I, Chap. I, Art. II.

57 Const. of 1822, Art. 223.

58 Const. of 1822, Art. 225.

59 Const. of 1822, Arts. 226-227.

60 Const. of 1823, Art. 264. This article also stated that the national chamber should appoint a judicial commission to pass on the "private affairs of all these individuals"; seemingly it referred to the judges, counsellors and literati. The purpose is not clear, though it was probably to determine their fitness to try cases involving knowledge in a special field.

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- 61 Const. of 1823, Arts. 262-263.
- 62 Const. of 1823, Arts. 265-266.
- 63 Const. of 1823, Arts. 267-268.
- 64 Const. of 1818, Tit. IV, Art. 5.
- 65 Const. of 1822, Arts. 235-242.
- 66 This condition is not mentioned in describing the qualifications for citizenship.
- 67 Const. of 1823, Arts. 225-234.
- 68 Const. of 1823, Art. 231.
- 69 Const. of 1828, Arts. 123-124.
- 70 Const. of 1833, Arts. 156-158.
- 71 Const. of 1833, Art. 159.
- 72 *Supra*, page 130.
- 73 Const. of 1822, Arts. 243-248.
- 74 Const. of 1823, Arts. 269-277.
- 75 Const. of 1828, Arts. 130-134.
- 76 Const. of 1833, Art. 163.

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